

In the Matter of KAISER COMPANY, INC. IRON AND STEEL DIVISION and  
UNITED STEELWORKERS OF AMERICA, CIO

In the Matter of KAISER COMPANY, INC. IRON AND STEEL DIVISION and  
SAN BERNARDINO METAL TRADES COUNCIL AND ITS AFFILIATED UNIONS  
THERE TO, A. F. OF L.

*Cases Nos. 21-R-1954 (R-5533) and 21-R-2058 respectively.—  
Decided November 24, 1943*

*Messrs. Thomas T. Inch and Walter R. Farrell, both of Oakland,  
Calif., for the Company.*

*Katz, Gallagher & Margolis, by Messrs. Charles J. Katz and Milton  
S. Tyre, both of Los Angeles, Calif., and Mr. Philip Curran, of Pitts-  
burgh, Pa., for the CIO.*

*Messrs. David Sokol and John C. Stevenson, both of Los Angeles,  
Calif., and Mr. Earl Wilson, of San Bernardino, Calif., for the Metal  
Trades Council.*

*Mr. Glenn L. Moller, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petitions duly filed by United Steelworkers of America, CIO, herein called the CIO, Brotherhood of Railroad Trainmen, herein called the Railroad Trainmen, and by International Union of Operating Engineers, herein called the Operating Engineers, alleging that questions affecting commerce had arisen concerning the representation of employees of Kaiser Company, Inc., Iron and Steel Division, Fontana, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice J. Nicoson, Trial Examiner. Said hearing was held at Fontana, California, on June 15, 16, and 17, 1943. The Company, the petitioning unions, International Brotherhood of Boilermakers, Iron Shipbuilders, Welders & Helpers of America, Local No. 92, herein called the Boilermakers, International Bridge, Structural Iron and Steel Workers of the United States of America, Local #433, herein

called the Bridge and Iron Workers, and San Bernardino Metal Trades Council, for itself and for its affiliated unions,<sup>1</sup> herein called the Metal Trades Council, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Toward the conclusion of the hearing the Operating Engineers moved for permission to withdraw its petition and join with the Metal Trades Council. The Trial Examiner referred the said motion to the Board for ruling. After the aforesaid hearing, the Railroad Trainmen requested of the Board leave to withdraw its petition, without prejudice. Both motions are hereby granted.

Thereafter, on August 13, 1943, the Board issued its Decision and Order, dismissing the petition of the CIO "without prejudice to its renewal at such time as a substantial number of employees is employed by the Company in all departments and categories and a substantial showing of representation among such employees can be made by the petitioning union." Thereafter, on August 28, 1943, pursuant to a motion by the CIO to set aside the Board's order dismissing the CIO petition and to reopen the record for the taking of additional evidence pertaining to the progress of construction of the plant and other relevant matters pertaining to the expansion of said plant, the Board issued an order reopening the record for the purpose of taking additional evidence, but withheld ruling upon that part of the motion which requested that the Board set aside its order of dismissal. For the reasons appearing hereinafter, the aforesaid motion to set aside the Board's order of dismissal is granted. The Board's Decision and Order of August 13, 1943, in Case No. R-5533, is hereby set aside.

Shortly after the hearing of June 15 and 17, 1943, San Bernardino Metal Trades Council, American Federation of Labor, filed a petition for investigation and certification of representatives in Case No. 21-R-2058, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company at its Moss Clay Pit located at Temesal Canyon, California. Thereafter, pursuant to the aforesaid order of the Board reopening the record in Case No. R-5533, and pursuant to an order of the Board consolidating the aforesaid cases, the National Labor Relations Board provided for an appropriate hearing upon due notice before Daniel J. Harrington, Trial Examiner. Said hearing was held at Los Angeles and at Fontana, California, on September 24, 1943. The Company, the CIO, and the Metal Trades Council appeared, participated, and were afforded full

<sup>1</sup> The Boilermakers, Bridge and Iron Workers, and the Metal Trades Council each filed a petition for leave to intervene, which motions were granted by the Trial Examiner at the hearing. Before the hearing was concluded, the Boilermakers and the Bridge and Iron Workers requested leave to withdraw from the proceedings in favor of the Metal Trades Council. The Metal Trades Council then requested leave to amend its petition to intervene accordingly. All of these requests were granted by the Trial Examiner, without objection.

opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. All parties were afforded opportunity to file briefs with the Board.

The Trial Examiners' rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Kaiser Company, Inc., a Nevada corporation, has its principal office at Oakland, California. The Company's activities are divided into four administrative divisions, only one of which, its Iron and Steel Division, is involved in this proceeding. The Iron and Steel Division operates a plant 4 miles west of Fontana, California, where it is engaged in the manufacture, production, and sale of steel, pig iron, coke, and coke byproducts. The Fontana plant is still under construction and, when completed, will be a completely integrated iron and steel plant. During the year 1942, in addition to material and equipment for construction of the plant, the Company purchased raw materials valued at more than \$3,000,000 for use in pig iron and steel production at the said plant. Thirty-five percent of said materials was shipped to the plant from points outside the State of California. During the same period the Company shipped to points outside the State of California in excess of 4,000 tons of pig iron. In conjunction with the Fontana plant, the Company operates a clay mine or pit, called the Moss Clay Pit, located about 40 or 50 miles from the plant, where the Company obtains its flux clay for use in the blast furnace at the steel mill. All of the output of the clay pit is used at the steel mill.

The Company admits and we find that it is engaged in interstate commerce within the meaning of the National Labor Relations Act.

### II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

San Bernardino Metal Trades Council, affiliated with the American Federation of Labor, is a labor organization admitting to membership, through its affiliated unions, employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that prior to the filing of its petition, the CIO had requested recognition as the exclusive bargaining representative of all production and maintenance employees at the Company's Fontana

plant, excluding supervisory employees and several other categories hereinafter discussed. The Company refused this request on the ground that there was not yet a representative body of employees working at the plant. Although the evidence at the first hearing indicated that the Company's contention was well founded, the evidence at the September hearing indicates that the situation has changed substantially. For the reasons appearing hereinafter under Section V, we find that the contention of the Company no longer has merit.

Statements of a Field Examiner for the Board, introduced into evidence at the hearing, indicate that the CIO and the Metal Trades Council each represents a substantial number of employees in the appropriate unit.<sup>2</sup>

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The CIO contends that the appropriate unit should consist of all production and maintenance employees at the Company's Fontana plant, including the shop clerical employees and the employees at the Moss Clay Pit, but excluding the executives, office and clerical employees, administrative employees, plant-protection employees (guards and firemen), full-time first-aid and safety employees, foremen, assistant foremen, supervisory employees above the rank of foremen, watchmen other than crossing watchmen and flagmen, all employees covered by a contract between the Building and Construction Trades Department of the American Federation of Labor, herein called the Building Trades Council and the Company, agricultural employees, and time-keepers. The Metal Trades Council agrees that the unit sought by the CIO is appropriate, with the following exceptions: it contends that the employees of the Moss Clay Pit constitute a separate appropriate unit and that the appropriate unit at the steel mill should include time-keepers, agricultural employees, and also all men now being carried

<sup>2</sup> The Field Examiner's report, introduced into evidence at the first hearing, indicates that the Metal Trades Council had submitted 217 authorization cards bearing apparently genuine signatures of persons whose names appear on the production and maintenance pay roll of the Company for the pay-roll period ending May 11, 1943, which contained the names of 716 employees in the appropriate unit.

The Field Examiner's reports which were introduced into evidence at the September hearing indicate that the CIO had submitted 496 application-for-membership cards bearing apparently genuine signatures of persons whose names appear on the Company's production and maintenance pay roll for the period ending September 11, 1943, which pay roll contained the names of 1,241 persons in the unit alleged by the CIO to be appropriate.

With reference to the Moss Clay Pit, the Field Examiner reported that the Metal Trades Council submitted five authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll for the period ending September 11, 1943, which contained the names of eight persons in the unit alleged by the Metal Trades Council to be appropriate. The CIO submitted one authorization card bearing the apparently genuine signature of a person whose name appears on the same pay roll and who is in the unit alleged by the Metal Trades Council to be appropriate.

on the construction pay roll but devoting any portion of their time to production or maintenance work. The Company takes no position as to the inclusion or exclusion of employees on the construction pay roll, timekeepers, shop clerical and agricultural employees, but indicated that it would prefer that the employees at the Moss Clay Pit should be included in the production and maintenance unit at the steel mill.

*Shop clerical employees.* These employees work in the various departments throughout the plant. They keep records of tools, production charts, materials; and perform other clerical duties pertaining to the departments in which they work. Both the CIO and the Metal Trades Council wish to include them in the appropriate unit while the Company took no position with respect to them. They are in constant contact with the production and maintenance employees. We see no reason for departing from the desires of the unions in this regard. The shop clerical employees will be included in the unit.<sup>3</sup>

*Timekeepers.* The CIO seeks to exclude timekeepers while the Metal Trades Council would include them. The timekeepers work throughout the plant keeping the time of both construction and production employees. The timekeepers have in the past been considered by the Company as part of the clerical and office workers in arranging vacations and holidays, although this is not a fixed policy of the Company. However, their hours of work are different from those of the office and clerical employees and a few have shifted to production or maintenance work. Most of their time is spent among the production, maintenance, and construction employees and their activities have nothing to do with fixing rates of compensation of other employees. There appears to be no sound basis for treating timekeepers in a different manner than the shop clerical employees. We shall include timekeepers in the appropriate unit.<sup>4</sup>

*Agricultural employees.* The CIO seeks to exclude while the Metal Trades Council would include the agricultural employees. There are about 20 persons employed in this category. They are engaged in the care and husbandry of groves of walnuts and oranges, vineyards, hayfields, and various vegetable crops. In addition, they do whatever landscaping is necessary around the administration and cafeteria buildings at the plant. The functions of these employees are too far removed from the production of steel to justify their inclusion in a unit composed primarily of steelworkers. We shall exclude the agricultural employees from the appropriate unit.

*Construction workers.* In March 1942, the Company entered into a closed-shop contract with the Building Trades Council covering all employees who were to be employed by the Company in the con-

<sup>3</sup> *Matter of Western Cartridge Company*, 46 N. L. R. B. 948.

<sup>4</sup> *Matter of Aluminum Company of America*, 44 N. L. R. B. 490.

struction of the steel mill. By the terms of this contract the Company agreed to employ in the construction of the plant only employees furnished by, or who were members of the Building Trades Council and its affiliated unions. Because of the urgent need for the Company's products, production was begun as soon as possible, before the plant was completed. As a result, the Company has had and, since construction of the plant is still in progress, still has in its employ both construction and production employees. The construction employees receives a higher wage rate than the production employees; are under entirely separate supervision; are carried on a separate pay roll; wear different identification badges; and have somewhat different working conditions. When a construction employee wishes to transfer to the production pay roll, he must resign and be rehired as a new employee. Virtually all of the maintenance work at the plant has been and until the plant is completed, will continue to be done by men working on the construction pay roll. Their wages for the time spent on maintenance or production work are charged to the production pay roll, but they receive the construction wage rates regardless of the kind of work they are doing. Some of the employees on the construction pay roll spend all or most of their time on maintenance work, but the proportion of time which any particular employee may spend doing maintenance work varies from week to week. Thus a construction employee may spend 1 week entirely on production or maintenance work and the following week may do nothing but construction work.

The Metal Trades Council seeks to include in the production and maintenance unit all employees on the construction pay roll who spend any part of their time on production or maintenance work, while the CIO would exclude all such employees. We agree with the position of the CIO. The construction workers are already represented by the Building Trades Council and have received all the benefits of the Building Trades Council's contract with the Company even when doing production or maintenance work. When the construction of the plant is completed, the construction workers are as likely, perhaps more likely, to leave the Company's employ and move to other construction jobs in order to continue to obtain the higher wage rate, than to seek reemployment on the production and maintenance pay roll. Every subject of collective bargaining which may concern them is currently being handled on their behalf by the Building Trades Council pursuant to its contract with the Company. In view of these facts, we shall exclude from the unit all persons carried on the Company's construction pay roll and who are presently covered by the Company's contract with the Building Trades Council.

*Moss Clay Pit.* The Metal Trades Council alleges that all production and maintenance employees at the Moss Clay Pit constitute a separate appropriate unit. There are four or five employees at the pit who are engaged in the actual mining of clay. One of them, the shovel operator, acts as foreman and is in complete charge of the operations in the absence of the superintendent. The latter divides his time about equally between the pit and the steel mill. The shovel operator has authority to order the discharge of other employees at the pit and his action in this respect is not questioned by the superintendent. The remaining three or four regular employees include an oiler, a mechanic, and jackhammer operators. The afore-mentioned employees constitute the entire regular crew at the pit. At the present time there are five or six temporary employees who are engaged in road maintenance work and in stripping the topsoil from the clay deposits. When the work of the temporary employees is completed, the Company plans to offer them jobs at the steel mill or, if they do not accept the Company's offer, to discharge them. The pay roll for the employees at the pit is kept at the steel mill and the wages of the employees are the same as those of employees on the production and maintenance pay roll at the mill. Most of the equipment used at the pit comes from the mill and when a piece of machinery, such as a bulldozer, is not needed at the pit, it is returned to the mill. Not only is there an interchange of equipment, but there is also some interchange of personnel. In addition, the Company indicated that the clay pit may soon be abandoned.

The small number of employees involved at the clay pit, the interchange of equipment and personnel, the close functional relation of the pit to the steel mill, and the uncertain future of the pit indicate that a separate unit of the employees at the clay pit would be inappropriate. The employees at the clay pit will be included in the appropriate unit at the mill. The shovel operator, however, since he is clearly a supervisory employee, will be excluded from the unit.

We find that all production and maintenance employees of the Company at its plant at Fontana, California, and at the Moss Clay Pit, including shop clerical employees and timekeepers, but excluding executives, office and clerical employees, administrative employees, agricultural employees, plant-protection employees (guards and firemen), full-time first-aid and safety employees, watchmen other than crossing watchmen and flagmen, foremen, and any other supervisory employees with authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees, or effectively to recommend such action, and also excluding all employees presently covered by a contract between the Company and the Building and Construction Trades Department of the American Federation of

Labor and carried on a separate construction pay roll, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

The evidence at the first hearing revealed that the Company's foundry and rolling mill, integral and necessary departments of the plant, which would employ approximately one-third of the plant's total personnel, were not yet completed and would not be in operation for several months. At the September hearing, however, it appeared that the foundry was completed, in operation, and had over half of its anticipated total personnel. It was also brought out at the September hearing that the rolling mill referred to at the earlier hearing consisted of three mills, a plate mill, a merchant mill, and a structural mill. The plate mill is now completed and in operation. At the time of the September hearing, there were employed in the plate mill 283 of the anticipated total of 320 employees. The merchant mill will not be ready for operation until approximately April 30, 1944, and the structural mill will not be ready for operation until approximately July 31, 1944. These two mills, personnel for which will not be recruited until approximately 30 days before they are ready to go into operation, will together employ a total of 415 employees, most of whom will be doing the same general type of work as is now being done at the plate mill. The evidence at the September hearing indicated that there are presently employed approximately 64 percent of the total anticipated personnel at the plant. We are satisfied that a representative group of employes is now employed in all categories and that we should therefore proceed with an immediate determination of representatives.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kaiser Company,

Inc., Iron and Steel Division, Fontana, California, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by San Bernardino Metal Trades Council and its Affiliated Unions, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.