In the Matter of JONES & LAUGHLIN STEEL CORPORATION *and* UNITED STEELWORKERS OF AMERICA (CIO)

*Case No. 8–C–1548.—Decided December 2, 1943*

## DECISION
AND
## ORDER

On October 5, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions and objections to the Intermediate Report. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and objections, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations made by the Trial Examiner, with the additions noted below.

In its exceptions to the Intermediate Report, the respondent reiterates its contention that a unit of guards is not appropriate within the meaning of the Act, petitions that the Board's certification of the Union as the collective bargaining representative of the employees in such a unit be revoked, and moves that the complaint accordingly be dismissed. The petition and the motion are hereby denied. The respondent has advanced no argument in support of its contentions which we have not considered and rejected in previous decisions holding that plant-protection employees may constitute appropriate units for collective bargaining under the Act.[1]

The respondent further excepts to the recommendation of the Trial Examiner that it be required to post appropriate notices "in conspicuous places at its Otis Works plants," contending that the posting of such notices should be confined to the guards' quarters. We are in

[1] See *Matter of Budd Wheel Company*, 52 N. L. R. B. 666, and cases cited therein; *Matter of Jones & Laughlin Steel Corporation*, 52 N. L. R. B. 975.

accord with the Trial Examiner's recommendation, and we find that the purposes of the Act will be better effectuated by a general posting of notices, rather than by a posting limited to the guards' quarters.

## ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jones & Laughlin Steel Corporation, Cleveland, Ohio, and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act;

(a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors;

(b) Immediately post in conspicuous places throughout its Otis Works plants in Cleveland, Ohio, including the premises occupied by its patrolmen, watchmen, firemen, and dump laborers, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

## INTERMEDIATE REPORT

*Mr. John Robert Hill*, for the Board.

*Mr. James C. Beech*, of Pittsburgh, Pa., for the respondent.

*Mr. William F. Donovan* and *Mr. Leo E. Casey*, of Cleveland, Ohio, for the Union.

### STATEMENT OF THE CASE

Upon a first amended charge duly filed on September 11, 1943, by United Steelworkers of America (CIO), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint, dated September 16, 1943, against Jones & Laughlin Steel Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance: (1) that on May 3, 1943, the Board in its Decision and Direction of Election in case No. R-5143[1] found that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains, and supervisors, constituted a unit appropriate for collective bargaining; (2) that a majority of the employees in the aforesaid appropriate unit designated and selected the Union as their representative for the purposes of collective bargaining at an election conducted by the Board on May 26, 1943; (3) that on June 5, 1943, the Board certified the Union as the exclusive representative of all employees in said unit for the purposes of collective bargaining; (4) that the Union at all times since said certification has been, and continues to be, the exclusive representative of all employees in said appropriate unit; (5) that on or about May 28, 1943, and at all times thereafter, the Union requested the respondent to bargain collectively; (6) that the respondent since on or about June 23, 1943, and at all times thereafter, has failed and refused to bargain with the Union; and (7) that by such refusal, the respondent interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

On or about September 24, 1943, the respondent filed an answer, admitting certain allegations of the complaint as to its business, and as to certain proceedings of the Board leading to the certification of the Union. In its answer, however, the respondent denied the commission of the alleged unfair labor practices, denied the appropriateness of the unit as found by the Board in Case No. R-5143, and denied that it has failed and refused to bargain with the Union, stating that its refusal to bargain was "qualified and conditional."

Pursuant to notice, a hearing was held on September 28, 1943, at Cleveland, Ohio, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its representatives. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Although afforded an opportunity to do so, none of the parties argued orally before the undersigned or filed briefs with him.

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[1] *Matter of Jones & Laughlin Steel Corporation* and *United Steelworkers of America (CIO)*.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Jones & Laughlin Steel Corporation is a Pennsylvania corporation engaged in the manufacture of iron and steel products. It operates steel mills in Pittsburgh, Aliquippa, and McKeesport, Pennsylvania, and Cleveland, Ohio. The instant case is concerned only with the steel mills located at Cleveland, Ohio, known as the Otis Works. The Otis Works consists of two plants, known as the Riverside plant, employing approximately 3,200 employees, and the Lakeside plant, employing approximately 1,500 employees.

With respect to the operations of the Otis Works, the respondent during the year 1942, used coal, limestone, iron ore and other raw materials with a value in excess of $1,000,000, approximately 50 percent of which came from points outside the State of Ohio. During the year 1942, the respondent manufactured at the Otis Works approximately 1,000,000 tons of ingot steel, in excess of 50 percent of which was shipped to points outside the State of Ohio.

At the hearing, the respondent admitted that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

### II. THE ORGANIZATION INVOLVED

United Steelworkers of America (CIO) is a labor organization which admits to membership employees of the respondent.

### III. THE UNFAIR LABOR PRACTICES

*The refusal to bargain*

1. The appropriate unit and representation by the Union of a majority therein

On May 3, 1943, the Board issued a Decision and Direction of Election (Case No. R-5143) finding, among other things, that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

On May 26, 1943, an election was held pursuant to said Direction of Election. On June 5, 1943, the Board certified the Union as the representative of the employees in the unit heretofore mentioned, for the purposes of collective bargaining.

At the hearing the respondent did not question the fact that the Board had certified the Union as the representative of its employees, but contested the appropriateness of the unit and the subsequent certification of the Union. The respondent did not adduce any evidence on the question of the appropriateness of the unit, or to rebut the presumption arising from the Board's certification that the Union is still the representative of the majority of the employees of the respondent in the appropriate unit.[2]

The undersigned finds, in accordance with the Board's previous determination, that all patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, but excluding lieutenants, captains

[2] None of the parties produced witnesses at the hearing and the evidence consists wholly of exhibits, stipulations and admissions of counsel.

and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after June 5, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provision of Section 9 (a) of the Act, the Union was on June 5, 1943, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

In a letter dated May 28, 1943, the Union requested respondent to bargain collectively with it as the exclusive representative of the employees in the unit. On June 23, 1943, the respondent sent the Union the following letter:[3]

> We have your letter of May 28, 1943, requesting that we meet with you, as soon as possible, to commence collective bargaining on behalf of the plant guards at the Otis Works.
>
> As you are well aware, the Corporation objected and still objects to the appropriateness of plant guards as a bargaining unit. Proof of this is to be found in the Statement, dated May 25, 1943, handed each plant guard at the Otis Works. As set forth in that Statement, it is our intention to use every legal means available to us to have plant guards classified with Supervisors in respect to collective bargaining. In accordance with this policy we are obliged to decline your request that we bargain with you on behalf of plant guards.

An agent for the Board, by letter dated August 14, 1943, referred to the respondent's refusal to bargain with the Union as set forth in respondent's letter of June 23, 1943, and inquired if this was the "definite position taken by the Company." On September 4, 1943, the respondent sent the Board agent the following letter:

> Referring to our telephone conversation of yesterday, representatives of Jones & Laughlin Steel Corporation will be pleased to confer with you in your office concerning the charges filed, in the above named case.
>
> Recently, we have had a National Labor Relations Board hearing in a case involving Plant Guards at the Pittsburgh Works of the Corporation and are awaiting a decision in that case.
>
> Therefore, we are deferring an answer with respect to bargaining with representatives of units composed of Plant Guards until such time as a final position of the Corporation has been established.

During the hearing, the respondent's counsel made the following statements concerning the respondent's position on its willingness to bargain with the Union:

> Mr. HILL. Is the present position of Respondent Corporation one of agreeing to bargain with the Union of this date or wanting to think it over until some further and unspecified date?
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> Mr. BEECH. Yes. I might state that Respondent hasn't taken a definite position as of this date.
>
> Trial Examiner EADIE. In other words, it is the Respondent's position as of this date that it is still not ready to say that it is willing to bargain with the Union?

[3] As noted above, the Board's certification is dated June 5, 1943.

Mr. BEECH. It is not prepared to say it will or will not, at this time, Mr. Examiner.

Mr. HILL. In other words, Respondent Corporation desires and will take time to think this matter over.

Mr. BEECH. That is true.

Trial Examiner EADIE. At any rate, as of today the Respondent is not prepared to say that it will bargain with the Union.

Mr. BEECH. That's true.

The undersigned finds that the respondent on June 23, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[4]

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. United Steelworkers of America (CIO) is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at its Otis Works, Cleveland, Ohio, but excluding lieutenants, captains and supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Steelworkers of America (CIO) was on June 5, 1943, and at all times thereafter, has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on June 23, 1943, and at all times thereafter, to bargain collectively with the United Steelworkers of America (CIO), as the exclusive representative of all its employees in the aforesaid appropriate unit, the re-

[4] The respondent contends that its refusal to bargain is "qualified and conditional and not final and conclusive." This contention is based on respondent's claim of the inappropriateness of the unit as found by the Board and, further, on the fact that the respondent was awaiting a decision in a case before the Board involving "Plant Guards at the Pittsburgh Works." (Referred to in respondent's letter dated September 4, 1943, to the Board's agent, as noted above). The undersigned does not find any merit in the respondent's contention in this connection.

spondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

## RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Jones & Laughlin Steel Corporation, and its officers, agents and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all its employees employed as patrolmen, watchmen, and firemen, including dump laborers, employed by the respondent at is Otis Works, but excluding lieutenants, captains and supervisors;

(b) Engaging in any like or related act or conduct interfering with, restraining, or coercing, its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America (CIO) as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post immediately in conspicious places at its Otis Works plants in Cleveland, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1943—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions

or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

JOHN H. EADIE,
*Trial Examiner.*

Dated October 5, 1943.