

In the Matter of BIRDSBORO STEEL FOUNDRY AND MACHINE COMPANY
and UNITED STEELWORKERS OF AMERICA—CIO

Case No. 4-R-1183.—Decided January 4, 1944

Mr. Charles A. Wolfe, of Philadelphia, Pa., for the Company.

Mr. Harry Boyer, of Reading, Pa., for the U. S. A.

*Messrs. John A. Reiser and Mark C. McQuillen, of Reading, Pa.,
for the Association.*

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America—CIO, herein called the U. S. A., alleging that a question affecting commerce had arisen concerning the representation of employees of Birdsboro Steel Foundry and Machine Company,¹ herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Reading, Pennsylvania, on December 8, 1943. The Company, the U. S. A.,² and Birdsboro Steel Foundry and Machine Company Employee and Beneficial Association, herein called the Association, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Birdsboro Steel Foundry and Machine Company, a Pennsylvania corporation, operates two plants at Birdsboro and a third at Reading,

¹ The Company's name appears in the caption and in the body of this Decision as corrected at the hearing by the omission of the abbreviation "Inc." following "Company."

² The U. S. A. signed a waiver of its charges of unfair labor practices filed against the Company in Case No. 4-C-1360, insofar as they might constitute a basis for objecting to the instant proceeding.

Pennsylvania, where it is engaged in the manufacture, sale, and distribution of hydraulic machinery, rolling mill machinery, iron and steel castings, and rolls. The principal raw materials used by the Company include pig iron, iron ore, sand, brick, lumber, manganese, chrome, and scrap iron. During 1943, the Company purchased for use at its three plants raw materials valued in excess of \$1,000,000, of which approximately 75 percent was purchased outside the Commonwealth of Pennsylvania. During the same period the Company sold products valued in excess of \$1,000,000, of which approximately 60 percent was shipped to points outside the Commonwealth of Pennsylvania.

The Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

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

Birdsboro Steel Foundry and Machine Company Employee and Beneficial Association is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 28, 1943, the U. S. A. notified the Company by registered mail of its intention to file a petition for investigation and certification of representatives with the Board. The Company, which at that time was a party to a collective bargaining contract with the Association, did not reply to the letter.

The Company and the Association now contend that the above-mentioned contract, as renewed, constitutes a bar to the petition of the U. S. A. The original contract was entered into by the Company and the Association on August 1, 1941, following the latter's certification by the Board as the bargaining representative of the Company's production and maintenance employees.³ It provides for a 2-year term, and contains a further provision for automatic renewal in the event neither party gives written notice of termination to the other party "at least thirty (30) days prior to the end of said term." No such notice was given within the prescribed time. As indicated above, however, written notice of intention to file a petition with the Board was mailed to the Company by the U. S. A. more than 30 days before the end of the 2-year term. This notice was received by the Company on June 29, 1943, 2 days before the automatic renewal pro-

³ *Matter of Birdsboro Steel Foundry & Machine Co.*, 33 N. L. R. B. 169.

vision became operative. Under the circumstances, the contract does not operate as a bar to a present determination of representatives.⁴

In its brief, the Company contends that the instant case is controlled by the Board's decision in *Matter of Continental Roll & Steel Foundry Company*, 44 N. R. L. B. 1051, wherein, upon a factual background similar in some respects, the Board dismissed a petition of the U. S. A. We do not agree with this contention of the Company. In that case, the petitioner's proportionate showing, based upon cards submitted, was less than in the instant case and weaker than it was at the prior election. In the instant case, the U. S. A. received approximately 36 percent of the valid votes cast in the prior election.⁵ A statement of the Regional Director, introduced into evidence at the hearing, indicates that the U. S. A. presently represents a more substantial number of employees, having made a current card showing of 43 percent.⁶ These facts clearly distinguish the instant case from that decision, which turns upon its own facts, and indicate a sufficiently substantial showing of representation to warrant an election among the Company's employees at this time.

We find that a question affecting commerce has 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

We find, in substantial accordance with a stipulation of the parties, that all production and maintenance employees at the Company's two plants in Birdsboro and its third plant in Reading, Pennsylvania, including storeroom employees, but excluding watchmen, special apprentices, photographers,⁷ draftsmen, laboratory employees, office janitors, office workers, clerical employees, timekeepers, outside truck drivers and helpers, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes

⁴ See *Matter of Pressed Steel Car Company, Inc.*, and cases cited therein, 41 N. L. R. B. 6.

⁵ The U. S. A. received a total of 370 votes of the 1,038 valid votes cast at the two plants.

⁶ The Regional Director stated that the U. S. A. submitted to him 846 request-for-membership cards, all bearing apparently genuine original signatures; and that 687 of the cards bore names of persons whose names appeared on the Company's November 15, 1943, pay roll, which listed 1,595 employees in the unit hereinafter found to be appropriate.

⁷ In the unit stipulation as set forth in the record, the word "stenographers" appears in place of "photographers." However, since the latter word appears in the petition of the U. S. A., and since photographers were specifically excluded in our prior unit determination, we have treated the substitution of "stenographers" for "photographers" as a typographical error, which we have corrected to reflect the intent of the parties as we understand it.

of collective bargaining within the meaning of Section 9 (b) of the Act.⁸

V. THE 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 pay-roll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Birdsboro Steel Foundry and Machine Company, Birdsboro and Reading, Pennsylvania, 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 Fourth 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 have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Steelworkers of America—CIO, or by Birdsboro Steel Foundry and Machine Company Employee and Beneficial Association, for the purposes of collective bargaining, or by neither.

⁸ This is substantially the unit which we previously found appropriate in *Matter of Birdsboro Steel Foundry & Machine Co.*, 32 N. L. R. B. 107, and which the Association's contract purported to cover. The significant difference is that the employees of an additional plant have been added to the unit.