

In the Matter of FANSTEEL METALLURGICAL CORPORATION, TANTALUM DEFENSE CORPORATION, VASCOLOY-RAMET CORPORATION and INDUSTRIAL GUARDS UNION, No. 23542, AMERICAN FEDERATION OF LABOR

Case No. 13-R-2092.—Decided January 10, 1944

Levinson, Becker, Peebles & Swiren, by *Mr. Max Swiren*, of Chicago, Ill., for the Companies.

Mr. Owen James, of Waukegan, Ill., for the Union.

Mr. Joseph W. Kulkis, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Industrial Guards Union, No. 23542, American Federation of Labor,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Fansteel Metallurgical Corporation, Tantalum Defense Corporation, Vascoloy-Ramet Corporation, at North Chicago and Waukegan, Illinois, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert R. Rissman, Trial Examiner. Said hearing was held at Waukegan, Illinois, on November 20, 1943. The Companies and the Union² 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The 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 COMPANIES

Fansteel Metallurgical Corporation, a New York corporation with its principal office and place of business located in North Chicago,

¹ The designation of the Union appears herein as amended at the hearing.

² Although served with the Notice of Hearing, the International Union, United Automobile, Aircraft & Agricultural Implement Workers, C. I. O., did not enter an appearance at the hearing.

Illinois, is engaged in the development and refinement of rare metals and the production and fabrication of rare metal compounds, alloys, and other products. The Company purchases a substantial portion of its raw materials from States other than the State of Illinois, and ships a substantial portion of its products to States other than the State of Illinois. Its annual purchases and sales exceed \$50,000.

Tantalum Defense Corporation, a wholly owned subsidiary of Fansteel Metallurgical Corporation, is a Delaware corporation maintaining and operating its principal place of business at North Chicago, Illinois, where it is engaged in the manufacture of tantalum and molybdenum. Its plant is located directly across the street from that of Fansteel Metallurgical Corporation. The Company purchases substantial quantities of raw materials from States other than the State of Illinois, and ships a substantial portion of its products to States other than the State of Illinois. Its annual purchases and sales exceed \$50,000.

Vascoloy-Ramet Corporation, a Delaware corporation, operates a plant at Waukegan, Illinois, where it is engaged in the manufacture of hard carbide cutting tools, drawing and extrusion dies and wearing surfaces. The plant is located approximately 3 miles from the plants of Fansteel and Tantalum. Two-thirds of the capital stock of the Company is owned by the Fansteel Metallurgical Corporation. The Company purchases a substantial portion of its raw materials from States other than the State of Illinois, and ships a substantial portion of its products to States other than the State of Illinois. Its annual purchases and sales exceed \$50,000. The Companies, although separately incorporated, are headed by the same president, R. J. Aitcheson.

Each of the Companies concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Industrial Guards Union, No. 23542, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

The Union, by letters dated September 20 and 25, 1943, notified the Companies that it claimed to represent a majority of the guards employed by the Companies, and requested recognition as their exclusive bargaining agent. The president of the Companies replied by letter dated September 30, 1943, refusing to recognize the Union, stating that in view of the guards' militarized status, the Companies questioned the propriety of the Union's request and, further, that they considered the unit sought by the Union to be inappropriate.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union seeks a single unit comprised of all the employees of the Guard Department⁴ of the Companies, excluding the Chief and Lieutenant. The Companies dispute the appropriateness of such a unit in view of the militarization of the guards, but contend that if a unit of guards is appropriate, then separate company units, comprised of guards and guardettes, excluding Chief, Lieutenant, sergeants, and clerical employees, are more appropriate.

We have heretofore held that the militarization of plant-protection employees was no obstacle to unionization and that guards, as well as other employees, are free to select their own bargaining representatives under the Act, and may as such, constitute an appropriate bargaining unit.⁵

The record discloses that the guard force for the Companies was organized in December 1941, by Frank J. Druba, Chief of the guards. All guards are identically uniformed and carry firearms. They are enrolled members of the Auxiliary Military Police and are generally responsible for the protection of the plants and property entrusted to their care.⁶ Employee applications for the plant-protection department, as well as the production and maintenance department of each Company, are filed and kept in the Tantalum employment office. All guards employed by the Companies are interviewed and hired by the Chief, and are paid by the respective Company where they are employed.⁷ They receive the same starting pay and any difference in the rate of the guard's pay depends upon the length of service, and not upon the place or location of employment. Although it appears from the record that the guards of each Company are on separate pay rolls and do not work together at any of the Companies' plants, they nevertheless are under the supervision of their respective

³ The statement of the Regional Director shows that the Union submitted 54 authorization cards bearing apparently genuine signatures; all of which appear on the current pay rolls of the Companies, which contain the names of 59 persons in the alleged appropriate unit.

⁴ The department is composed of guards, guardettes, sergeants, and clerical employees.

⁵ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322

⁶ At the present time, Fansteel employs 3 sergeants and 24 guards; Tantalum employs 4 sergeants and 22 guards; and Vascoloy employs 3 sergeants and 8 guards

⁷ Except for one instance where a guard regularly employed at Fansteel acted as a relief guard at Vascoloy, there has been no interchange of guards at the plants of the Companies.

sergeants, who, in turn, are under the direct supervision of the Chief and Lieutenant.⁸ In view of the foregoing, we are of the opinion that a single unit comprised of the guards employed by the Companies is appropriate.

Guardettes.—At the present time, guardettes are employed only at the Tantalum plant. Their primary duty is to act as escorts in the plant buildings. They are uniformed, but carry no firearms and are not members of the Auxiliary Military Police. Since they are not militarized, we shall exclude them from the unit hereinafter found appropriate.

Sergeants.—The sergeants, who are members of the Auxiliary Military Police, are armed and uniformed. Each of the sergeants is in charge of a shift of guards, and each sergeant has supervisory authority over the guards working on his shift. In the absence of the Chief and the Lieutenant,⁹ the sergeant is the highest responsible officer in exclusive control of the guards. In view of the supervisory duties of the sergeants, we shall exclude them from the unit.

Desk Sergeant.—The desk sergeant employed at Tantalum Defense Corporation has no supervisory duties. His work is to prepare necessary visitors' entrance passes and to check on all visitors to the Tantalum Defense Corporation plant. We shall include him in the unit.

Clerical employees.—These employees are not militarized and have duties and functions distinctly different from that of the guards. We shall therefore, exclude them from the unit.

We find that all guards employed by the Companies in the Guard Department at their North Chicago and Waukegan, Illinois, plants, including the desk sergeant at the Tantalum Defense Corporation plant, but excluding the Lieutenant, the Chief, guardettes, sergeants, clerical employees, 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 of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

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

⁸ The Chief and Lieutenant are on the pay roll of Fansteel.

⁹ The Chief and Lieutenant are on duty only 16 hours a day; the Chief from 8 a. m. to 4 p. m. and the Lieutenant from 8 p. m. to 4 a. m.

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 Fansteel Metallurgical Corporation, Tantalum Defense Corporation, and Vascoloy-Ramet Corporation, 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 Thirteenth 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 any persons 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 or not they desire to be represented by Industrial Guards Union, No. 23542, American Federation of Labor, for the purposes of collective bargaining.