

In the Matter of MIDWEST PIPING & SUPPLY CO., INC. and UNITED STEEL-
WORKERS OF AMERICA, CIO

Case No. 14-R-823.—Decided January 21, 1944

Fordyce, White, Mayne, Williams & Hartman, by *Mr. N. W. Hartman*, of St. Louis, Mo., for the Company.

Mr. McConnell Barr and *Mr. Robert McVay*, of St. Louis, Mo., for the Steelworkers.

Bartley & Mayfield, by *Mr. Waldo Mayfield*, of St. Louis, Mo., for the Steamfitters.

Mr. Thomas Conway, of St. Louis, Mo., for the Weldors.

Mr. Leon Novak, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Steelworkers, alleging that a question affecting commerce had arisen concerning the representation of employees of the Midwest Piping & Supply Co., Inc., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Ryburn L. Hackler, Trial Examiner. Said hearing was held at St. Louis, Missouri, on December 4 and 8, 1943. The Company, the Steelworkers, the International Association of Steam and Gas Fitters of United States and Canada, Local 562, A. F. L., and Auxiliary Local 562, United Association of Steam, Gas, Refrigeration Service Fitters and Pipe Fabricators, A. F. L., herein called the Steamfitters, and United Brotherhood of Weldors, Cutters and Helpers of America, Local No. 15, herein called the Weldors, appeared and participated. All parties 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 Company has requested opportunity to present

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oral argument before the Board. The request is hereby denied. All parties were afforded an 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

Midwest Piping & Supply Co., Inc., is a Missouri corporation with its principal place of business in St. Louis, Missouri. At its three plants in St. Louis, Missouri, known as Plants 1, 2, and 3, with which this proceeding is solely concerned, the Company is engaged in the fabrication of pipe and in the manufacture and production of welding fittings and bomb casings. In addition to its manufacturing business, the Company also conducts a contracting business engaged in the construction and erection of pipe throughout the United States. It maintains selling offices in Tulsa, Oklahoma, Chicago, Illinois, New York City, and Boston, Massachusetts. During the fiscal year ending February 28, 1943, the Company's gross sales amounted to approximately \$14,000,000. During the same period, the Company purchased raw materials, for use at Plant 3 in St. Louis, Missouri, valued at approximately \$4,000,000, of which approximately 95 percent was shipped from points outside the State of Missouri. During the same period the Company's gross sales of finished products, at Plant 3, amounted to approximately \$3,000,000; all such products were delivered to the United States Government at Plant 3, and, immediately thereafter, were shipped to points outside the State of Missouri.

We find that the Company is engaged in 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.

International Association of Steam and Gas Fitters of the United States and Canada, Local 562, and Auxiliary Local 562, United Association of Steam, Gas, Refrigeration Service Fitters and Pipe Fabricators, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

United Brotherhood of Weldors, Cutters and Helpers of America, Local No. 15, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1942 the Steamfitters and the Company entered into a contract whereby the Steamfitters was recognized as the bargaining representative of its members at Plants 1 and 2 of the Company. Simultaneously therewith, the parties entered into a further contract covering the members of the Steamfitters, in Plant 3. By their terms, both contracts were to remain in effect from February 1, 1943 to December 31, 1943, with automatic renewal for an additional period of one year unless notice of a contrary intention was given, in writing, not later than September 30, 1943. On September 23, 1943, the Steamfitters notified the Company that it wished to negotiate a new contract. On October 30, 1943, the Steelworkers requested the Company to recognize it as the exclusive bargaining representative of the employees of the Company in Plant 3. The Company refused for the asserted reason that the Company was operating under a contract with the Steamfitters and, at the hearing, the Company and the Steamfitters contended that the contract is a bar to this proceeding. Since both contracts covering the Company's plants, by their terms, are confined only to the members of the Steamfitters, and since, in addition, the Steamfitters, prior to September 30, 1943, as provided in the said contracts, gave notice to the Company that it wished to negotiate a new contract, we find that the contract in question does not constitute a bar to this proceeding.

A statement of the Regional Director, introduced into evidence at the hearing, and a statement of the Trial Examiner indicate that the Steelworkers, the Steamfitters, and the Weldors each represents a substantial number of employees in the unit alleged by it to be appropriate.¹

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.

¹ The Regional Director reported that the Steelworkers submitted 210 designations, of which 203 bear apparently genuine original signatures; that 200 of these cards bore the names of persons whose names are on the Company's pay roll of November 22, 1943, containing 420 names within the alleged appropriate unit.

The Regional Director reported that the Steamfitters submitted 330 designations, of which 326 bear apparently genuine original signatures; that 308 of these cards are the names of persons whose names are on the Company's pay roll of November 22, 1943.

The Regional Director reported that the Weldors submitted 20 designations of which 19 bear apparently genuine original signatures; that 1 of these cards is the name of a person whose name is on the Company's pay roll of November 22, 1943, containing 34 names within the alleged appropriate unit. The Trial Examiner further stated that the Weldors submitted to him, at the hearing, 16 additional designations bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of November 22, 1943.

IV. THE APPROPRIATE UNIT

The Steelworkers seeks a unit consisting of all the Company's production and maintenance employees at Plant 3, excluding clerical employees, timekeepers, watchmen, guards, the safety engineer, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The Steamfitters and the Company contend that the unit should include employees of all three plants of the Company, known as Plants 1, 2, and 3.

The Company has, for a number of years, owned and operated Plants 1 and 2, where it has been engaged in the fabrication of pipe and the manufacture of welding fittings. These two plants are located on opposite sides of the street and are connected by a tunnel. In 1942, the Company, for the purpose of producing bomb casings, erected Plant 3, adjoining Plant 1, but separated from it by a solid wall, in accordance with regulations of the United States Army Ordnance Department. While Plants 1 and 3 have a common source of fuel and electricity, they are, in their functions, otherwise independent of each other. Plant 3 has its own employees' entrance and its own railroad siding and loading facilities.

Production processes in Plant 3 are in no way integrated with those in Plants 1 and 2. None of the products produced in the latter plants is used in the manufacture of bomb casings made in Plant 3. The raw materials used in Plants 1 and 2, are not suitable for use in Plant 3, and are separately stored by the Company. Production methods in Plant 3 differ materially from those in Plants 1 and 2, inasmuch as in Plant 3 the Company employs a line conveyor system, a method of manufacture not used in its other plants.

The record fails to establish any appreciable interchange of employees between Plant 3 and Plants 1 and 2. Where interchange of employees does occur, it is confined to the work of welders, and takes place chiefly when necessitated by illness or absences. Seniority in the three plants is applied on a single plant basis and not on a system-wide basis. While the Company maintains one general office for all three plants and has a single personnel office, it appears that Plants 1 and 2 have a common pay roll, while Plant 3 has a separate pay roll. Furthermore, employees in Plant 3 wear badges of a different color from those worn by employees in the other plants. Employees in Plants 1 and 2 cannot obtain admittance to Plant 3. Plant 3, unlike the other plants, is guarded by militarized guards.

Since 1937, the Steamfitters has bargained for Plants 1 and 2 as a single unit. With the erection of Plant 3, the Company and the

Steamfitters did not include the latter within the unit already established, but executed a separate contract for Plant 3, the provisions of which differed materially from those included in the contract covering Plants 1 and 2.²

Upon the record as a whole, we are of the opinion that Plant 3 properly constitutes a separate bargaining unit.

The Weldors urges a separate unit for welders and cutters in Plant 3. With respect to such a unit, it appears that, while the welders and cutters perform only welding operations, they are not confined to any one department, but perform their work together with other production employees along the Company's conveyor line in Plant 3. In addition, while they are partly under the supervision of a welding foreman, they are also supervised by the General Superintendent of Plant 3, who has final jurisdiction over the rate and quantity of their production. Furthermore, welders have been included in an industrial unit, since 1937, in the bargaining history of Plants 1 and 2, and since 1942 in Plant 3. Under these circumstances, we are of the opinion that a unit of welders and cutters would be inappropriate and that the interests of all employees, including welders and cutters, will best be served by their inclusion within the industrial unit.

The Steelworkers seeks to exclude from the industrial unit foremen and leadmen; the Steamfitters seeks to include those who are hourly paid. The Company takes no position. The record indicates that foremen and leadmen have the authority to make effective recommendations for changes in status of employees working under them. In addition, foremen spend all of their time in supervision, while leadmen spend 75 percent of their time in such supervision. We shall exclude foremen and leadmen from the appropriate unit.

We find that all production and maintenance employees at Plant 3 of the Company, excluding all clerical employees, timekeepers, the safety engineer, watchmen, guards, foremen, leadmen, 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 an election by secret ballot among the em-

² The contract covering Plant 3 specifically excluded from its terms those provisions of the contract, covering Plants 1 and 2, which provided for vacations with pay, rates of pay for persons reclassified, and compensation for employees performing construction work at locations away from the Company's plants.

ployees in the appropriate unit 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. The Steelworkers requests that it be designated on the ballot as United Steelworkers of America, C. I. O. The Steamfitters requests that it be designated on the ballot as United Association of Pipe Fabricators, Local 562, A. F. L. The requests of the organizations are hereby granted.

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 Midwest Piping & Supply Co., Inc., 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 Fourteenth 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, C. I. O., or by United Association of Pipe Fabricators, Local 562, A. F. L., affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.