

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

SUPPLEMENTAL DECISION

AND

CERTIFICATION OF REPRESENTATIVES

February 10, 1944

On December 21, 1943, pursuant to the Decision and Direction of Election issued by the Board herein on November 24, 1943,¹ and an Order correcting said Decision and Direction of Election issued on November 29, 1943, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally shows that of the approximately 1,500 eligible voters in the appropriate unit, 954 cast valid votes, of which 606 were for United Steelworkers of America, affiliated with the Congress of Industrial Organizations, herein called the CIO, 348 were for San Bernardino Metal Trades Council and Its Affiliated Unions, affiliated with the American Federation of Labor, herein called the Metal Trades Council, and 5 were for neither. Five ballots were void and 1,185 were challenged.

Thereafter, on December 28, 1943, the Regional Director issued and caused to be served upon the parties his Report on Challenges. Said Report shows that of the 1,185 challenged ballots, 1,141 were cast by employees whose names appeared on the Company's construction pay roll, as distinguished from employees whose names appeared on the production pay roll. Pointing out that employees carried on the Company's construction pay roll had been specifically excluded from the appropriate unit in the Board's Decision and Direction of Election,

¹ 53 N. L. R. B. 880.

54 N. L. R. B., No. 185.

the Regional Director recommended that these challenges be sustained. Thereafter, on January 3, 1944, and on January 25, 1944, San Bernardino Metal Trades Council filed Objections and Amended Objections to the Report on Challenges requesting that the Board count the ballots which had been cast by the employees listed on the Company's construction pay roll, but who were doing production and maintenance work.

In its Objections and Amended Objections to the Report on Challenges, the Metal Trades Council contends that employees listed on the Company's construction pay roll who are engaged in production and/or maintenance work are not, while so engaged, covered by the existing contract² between the Company and the Building and Construction Trades Department of the American Federation of Labor, herein called the Building Trades Department, and, accordingly, were not excluded from the appropriate unit and from participation in the election by the terms of the Board's aforesaid Decision and Direction of Election. The Metal Trades Council further suggests, in its Objections, that "at least" those employees listed on the construction pay roll "who, for more than 50% of their time regularly perform production and maintenance work" should have been permitted to participate in the election as production and maintenance employees.

At both hearings in this proceeding the CIO contended that all the employees listed on the Company's construction pay roll, even though such employees might be engaged part time in production and/or maintenance work, should be excluded from the appropriate unit of production and maintenance workers. Asserting that the construction pay-roll employees have an interest in the production and maintenance unit by virtue of the fact that they devote part of their working time to work allocated by the Company to production and maintenance costs, and further contending that such employees have no collective bargaining representative during such periods as they are engaged in production or maintenance work, the Metal Trades Council consistently urged that the employees in question should be permitted to participate in the selection of a bargaining representative for the Company's production and maintenance workers. This, essentially, is the position now reasserted by the Metal Trades Council in its Objections to the Report on Challenges. In our aforesaid Decision and Direction of Election we found merit in the CIO's contention and rejected the contention of the Metal Trades Council. In reaching this conclusion, we

²This contract, covering the construction of the plant, is between the Company and the "Building and Construction Trades Department of the American Federation of Labor and the Local and International Unions affiliated with said Department, whose names are subscribed hereto." The signatory unions include all of the unions herein represented by the Metal Trades Council with the exception of the International Brotherhood of Electrical Workers, which was apparently omitted through oversight, since all parties have considered electricians as covered by the contract.

remarked, *inter alia*, that the construction pay-roll employees are segregated from the Company's regular production and maintenance employees by means of a separate pay roll and identification badges; that they enjoy higher wage rates than the production and maintenance workers, pursuant to the afore-mentioned closed-shop contract between the Company and the Building Trades Department; that they must resign and make application to be hired as new employees in order to effect a "transfer" from the construction to the production pay roll; and that even while engaged in production and/or maintenance work they receive the higher construction wage rates. Upon the basis of these facts and other evidence to the same effect, notably the uncontradicted testimony of witnesses for the Metal Trades Council, we found that the construction workers enjoy the benefits of the Building Trades Department's contract even when engaged in production and maintenance work. In consideration of these facts and the further circumstances that the construction pay-roll employees not only are assigned to production or maintenance work on an intermittent and irregular basis, but also that they are unlikely to remain in the Company's employ upon completion of the construction of the plant, we excluded them from the appropriate unit.³ In its Objections now before us the Metal Trades Council, in effect, urges for the second time⁴ that we reconsider and alter this determination.

Upon further consideration of the entire record, we are still of the opinion that the construction pay-roll employees have an insufficient interest in the terms and conditions of employment of the Company's regular production and maintenance workers to warrant their participating in the choice of a bargaining representative for the latter group.

³ Our finding was that the appropriate unit consisted of "all production and maintenance employees . . . 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, . . ." The Metal Trades Council now contends that this finding established two separate criteria, both essential for defining the excluded class of employees, and that these criteria namely, that the employees in question must be covered (while engaged in production work) by the Building Trades Department's contract, as well as listed on the construction pay roll, are not satisfied in the case of the challenged voters, who allegedly devote some proportion of their working time to production and/or maintenance work, and are not covered by the Building Trades Department's contract while so engaged. We reject this contention. The Regional Director correctly interpreted our Decision as excluding all construction pay-roll employees from the appropriate unit. In view of the issues framed at the hearings herein, and our subsidiary findings and conclusions summarized above, we are satisfied that the meaning of our Decision was not obscure to the parties to this proceeding. In any event, even if the descriptive phrases used in the unit finding were ambiguous, the appropriate remedy would have been a motion requesting the Board to clarify its Decision. Instead, the Metal Trades Council filed on December 2 and December 8, 1943, certain documents in the nature of a motion for reconsideration and to reopen the record, wherein it merely reiterated its general contentions and denied the accuracy of our findings of fact. It is clearly apparent from the recitals in these documents that the Metal Trades Council correctly construed our Decision as excluding from the appropriate unit all employees listed on the construction pay roll. Upon reconsideration of the record, this motion was dismissed by order of the Board on December 8, 1943.

⁴ See footnote 3, *supra*.

Our previous finding that the construction pay-roll employees are at all times represented by the Building Trades Department is amply supported by the record made at the two hearings held in this proceeding, and while the Metal Trades Council continues to challenge our conclusion in this respect it has at no time claimed that it could produce new evidence on the subject which was not available at the time of the hearings.

Even if the circumstances relating to the present collective bargaining representation of the construction employees were otherwise, we should remain convinced that the additional factors upon which our original decision was based, namely, the temporary and casual character of the construction employees' assignments to production and/or maintenance work assignments, impel the conclusion that these employees have no substantial interest in the collective bargaining to be conducted on behalf of the production and maintenance employees. The suggestion is now advanced by the Metal Trades Council, for the first time,⁵ that eligibility to participate in the election should have been conferred upon those of the construction employees who "regularly" devote more than half their working time to production and/or maintenance work. We find no merit in this suggestion, for two reasons: In the first place, it is apparent from the record made at both the hearings that the number of construction employees who "regularly" spend a major portion of their time in the performance of work allocated to production and maintenance costs, if there be any such class, is negligible,⁶ and that identification of such employees by any satisfactory formula would be virtually impossible.⁷ Secondly, even

⁵ Heretofore the Metal Trades Council has contended that any and all construction pay-roll employees who spend any proportion of their time, however slight, in production or maintenance work, should be eligible to participate in the election.

⁶ At the second hearing herein there was received in evidence a tabulation showing the distribution of the working time, as between construction work and production and/or maintenance work, of the employees on the construction pay roll during the period from August 22 to and including September 12, 1943. Except as to a group of 247 laborers, warehouse employees, and railroad employees (whose time as a group was divided between construction work and production and/or maintenance work) the allocation of working time was shown for each employee individually. This evidence shows that out of 1,931 non-supervisory construction workers employed during the 3-week period, 1,011 were detailed to production and/or maintenance work at some time in said period; but only 326 of these spent more than 25 percent of their 3 weeks' time in production or maintenance work; and only 102 spent 50 percent or more of their time in such work; while an additional 46 spent their full time in work allocated to production and maintenance costs. Analysis of the same tabulation by weekly periods reveals that the individual composition of the groups of employees who are detailed, either full-time or part-time, to production or maintenance work changes from week to week, while the number of those who continue to be assigned steadily to such work declines sharply. Thus, out of 73 employees who were engaged full time in production and/or maintenance work during the first week of the period, only 46 were still detailed full-time to such work during the third week. Of 104 employees who spent 50 percent of their working time in production and/or maintenance work during the first week, only 43 were still assigned to such work, half time or more, during the third week.

⁷ The record does not establish that the 3-week period covered by the above-described tabulation, or any other given period, is indicative of the over-all employment history, as regards the allocation of working time, of any particular individual or group of employees.

if it could fairly be concluded that some employees on the construction pay roll have over a period of time been assigned to production or maintenance tasks absorbing a major portion of their working time, the fact remains obvious that all such employees are nevertheless primarily construction workers; their assignment to production or maintenance work, considering the infrequency of its occurrence and the unlikelihood of their being retained as permanent production or maintenance employees, is in the nature of a temporary detail. It is clear that these employees are hired as construction workers, pursuant to a contract requiring the Company to employ, and the craft unions affiliated with the Building Trades Department to supply, workmen possessing the skills requisite for construction of the Company's steel plant. This construction project will be completed, and the construction pay roll will be entirely eliminated, by about August of this year. At that time there will be available in the Company's maintenance department only about 115 skilled craft jobs which might conceivably be sought by the 1500-odd skilled craftsmen now listed on the construction pay roll.⁸ Manifestly, the interest of this large group of skilled employees in the working conditions surrounding 115 future jobs—jobs which they will in all probability reject because of the lower wage scale⁹—is insubstantial. It would be unjust to permit them to participate in the selection of a bargaining representative for the Company's regular production and maintenance employees.

We find that the exceptions to the Report on Challenges raise no substantial or material issues with respect to the conduct or results of the election. The exceptions are hereby overruled; and we adopt the Regional Director's recommendation that the challenges to the ballots of the 1,141 construction pay-roll employees be sustained. Since the remaining challenges cannot affect the outcome of the election, it is unnecessary to make any determination with respect thereto. We shall, accordingly, certify the C. I. O. as the exclusive bargaining

On the contrary, it is inferable from the entire record that the assignment of construction employees to production and/or maintenance work is dictated largely by variable and unpredictable factors, such as delays in the delivery of building materials, which affect the progress of the construction project. The record of the first hearing in this proceeding, held in June 1943, contains evidence as to the distribution of the working time of six named employees on the construction pay roll. In June, these six individuals were principally engaged in production or maintenance work. Three months later, as revealed by the evidence received at the second hearing, only two of them were detailed half time or more to production and maintenance work. The other four were spending a major part or all of their time in construction work.

⁸ The record shows that virtually all the so-called production work now performed by employees on the construction pay roll is maintenance work, or work which, though presently charged to production costs, will be eliminated when the plant is completed and all permanent facilities are installed.

⁹ There is evidence indicating that at the present time, the Company would have difficulty retaining in its employ the skilled workers now carried on its construction pay roll if it did not pay them the higher construction wage rates while they are performing work chargeable to production costs.

representative of the Company's employees in the unit heretofore found appropriate, subject only to the qualification discussed below. In order to obviate any future controversy as to the meaning of that finding with respect to the excluded class of construction workers, we shall eliminate from the description of such class in our Certification herein, the redundant phrase referring to the contract between the Company and the Building Trades Department.

Subsequent to the hearing and the issuance of the Decision and Direction of Election, but before the election was held, General Truck Drivers Union, Local 467, AFL, herein called the Truck Drivers, filed a petition with the Board in Case No. 21-R-2225, seeking an election in a unit consisting of all persons employed as chauffeurs, driving company cars throughout the plant in transporting company officials and guests. During the election, three of the approximately nine employees in this alleged appropriate unit cast ballots. Pursuant to prior announcement, their ballots were challenged and impounded. Thereafter, on January 20, 1944, pursuant to notice issued by the Regional Director, a hearing on the Truck Drivers' petition was conducted, and the matter is presently pending before the Board. In the interest of expedition we shall refrain, at this time, from certifying the CIO as bargaining representative of this group of employees. However, our action in this regard shall be without prejudice to a later determination, after examination of the relevant facts, that such employees should not be set apart from the production and maintenance employees.

CERTIFICATION OF REPRESENTATIVES

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3,

IT IS HEREBY CERTIFIED that United Steelworkers of America, affiliated with the Congress of Industrial Organizations, has been designated and selected by a majority of all production and maintenance employees of Kaiser Company, Inc., Iron and Steel Division, 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, all persons employed as chauffeurs, driving company cars throughout the plant in transporting company officials and guests, 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 carried on the separate construction pay roll, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. GERARD D. REILLY took no part in the consideration of the above Supplemental Decision and Certification of Representatives.