

In the Matter of THE YOUNGSTOWN SHEET AND TUBE COMPANY and
UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 13-R-2161.—Decided February 16, 1944

Pope and Ballard, by *Mr. C. R. Kaufman*, of Chicago, Ill., *Messrs. Herman J. Sporer* and *Bert Smith*, both of East Chicago, Ind., and *Mr. Floyd Schesler*, of Youngstown, Ohio, for the Company.

Messrs. L. H. Thornton and *John M. Mayerik*, both of East Chicago, Ind., and *Mr. Howard W. Vezey*, of Hammond, Ind., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Youngstown Sheet and Tube Company, East Chicago, Indiana, and South Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Chicago, Illinois, on January 6 and 8, 1944. The Company and the Union 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. 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

The Youngstown Sheet and Tube Company, an Ohio corporation, is engaged in the business of manufacturing, processing, selling, and
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distributing iron, steel, and other metal products. For this purpose, it operates several plants located in Ohio, Pennsylvania, Indiana, Illinois, and at various other points in the United States, and likewise owns and operates coal, iron, and zinc mines at various points throughout the United States. We are concerned herein with the operations of the Company's plants at East Chicago, Indiana, and South Chicago, Illinois, which are linked under a common management. During the year 1942, the Company purchased iron, steel, and other products, valued in excess of \$48,000,000, of which more than 50 percent was purchased outside the States in which the various plants are located. During the same period, the Company manufactured various products, valued at more than \$122,000,000, more than 50 percent of which was shipped to points outside the States wherein the producing plants were located. With respect to the East Chicago or Indiana Harbor plant, which is one of the plants involved herein, the purchases of the Company exceeded \$5,000,000 during the year 1943, of which more than 50 percent was received from points outside the State of Indiana, and during the same period said plant sold finished products, valued in excess of \$10,000,000, of which more than 50 percent was shipped to points outside the State of Indiana. The above-mentioned percentages are also true with respect to the receipt of raw materials and the production of finished goods at the South Chicago plant of the Company. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused several requests of the Union, both written and oral, for recognition as the collective bargaining representative of the clerical employees engaged at the South and East Chicago plants of the Company in the absence of certification by the Board.

The Company is currently operating under a collective bargaining agreement with the International, covering all production and maintenance employees, excluding, *inter alia*, clerical employees, in the plants herein involved. Evidence was adduced at the hearing which showed that the Company and the Union excluded, by consent, all clerical employees from the production and maintenance unit in which an election was to be conducted for the purposes of choosing a collective bargaining representative; that following the election conducted in

said unit, the Union was recognized as the collective bargaining representative of the employees therein; and that the Union entered into contractual relations with the Company covering the unit set forth in the stipulation. The Company contends that this exclusion estops the Union from seeking to represent the clerical employees. However, the prior exclusion of certain categories of employees from a particular bargaining unit established by agreement, or otherwise, does not act as an estoppel against the subsequent organization of such employees by the same labor organization as represents the previously established unit, particularly where, as here, such labor organization made no commitment not to seek the representation of such employees.¹ Accordingly, we find this contention of the Company to be without merit.

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 designated as appropriate.²

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

The Union seeks to represent a unit comprised of all clerical employees of the East Chicago (Indiana Harbor) and South Chicago plants of the Company, including draftsmen, but excluding all employees listed on Appendix "A" attached hereto, all employees on the staffs of the management and general superintendent, all employees of the industrial relations, safety, employment, insurance, and plant-protection departments, industrial and time-study engineers, telephone operators, confidential, administrative, professional and technical employees, salaried pay-roll clerks, clerical employees covered by the agreement between the Company and the Union, dated August 13, 1942, 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 Company, in opposing the formation of this unit, contends that (1) clerical employees are so closely associated with management that they should not constitute a unit for the purposes of collective bargaining, and (2) in any event, such employees should not be represented by the same labor

¹ Cf. *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932; *Matter of Briggs Manufacturing Company*, 49 N. L. R. B. 57.

² The Regional Director reported that the Union submitted 282 designations bearing apparently genuine original signatures and purporting to bear the names of persons employed by the Company. The Company refused to submit a pay roll, thus precluding a check of the foregoing designations. However, it is estimated that there are approximately 300 persons within the unit hereinafter found appropriate.

organization which represents the production and maintenance employees.³ However, in the event these contentions are found to be invalid, the Company concedes the propriety of the proposed unit.

We have frequently held that clerical employees, although generally excluded from units of production and maintenance employees, may constitute separate units, and that in such event, they may be represented by whatever bargaining agency they choose.⁴ Accordingly, we find no merit in the afore-mentioned contentions of the Company.

As noted above, the Company concedes that the general composition of the unit sought herein is appropriate and, the parties are agreed upon the exclusion of those classifications of employees listed on Appendix "A" attached hereto; it disagrees, however, with the Union with respect to the status of certain specific categories, i. e., superintendents, confidential clerks, stenographers and secretaries, and traffic clerks, listed in Appendix "B" attached hereto; it contends that these employees should also be excluded from the afore-mentioned unit on the ground that they are confidential employees closely aligned with management, whereas the Union desires their inclusion therein.

The record indicates that superintendents' clerks are essentially assistants to the superintendents whom they serve; that they have access to many of the confidential communications passing between the superintendent and his superiors; that they handle minor grievances pertaining chiefly to errors in pay; and that they are advised of contemplated changes in production schedules, which information is of a confidential nature. In many instances, they perform minor administrative duties which would otherwise fall upon the superintendent. From the foregoing, it appears that the duties and interests of these employees align them more closely with management than with the rank and file employees. Accordingly, we shall exclude them from the unit.⁵

The traffic clerk attached to the transportation department performs functions similar to those performed by the superintendents' clerks, and for reasons previously stated, we shall exclude him also.

The superintendents' secretaries and stenographers handle the dictation, correspondence, and files of the superintendents. Since the latter exercise almost autonomous jurisdiction over their respective departments, these secretaries and stenographers have access to matters relating to policy concerning production, industrial relations, and other matters of a confidential nature which are contained in the memo-

³ As previously noted, the Company also contends that the Union is estopped from representing such employees. This contention was discussed in Section III, above, and found to be without merit.

⁴ *Matter of Olvee Farm Equipment Company*, 53 N. L. R. B. 1078, and cases cited therein; *Matter of Potash Company of America*, 53 N. L. R. B. 441, and cases cited therein.

⁵ Cf. *Matter of New York Telephone Company*, 53 N. L. R. B. 307.

randa between the superintendents and their superiors. We are of the opinion that these employees fall within our customary definition of confidential employees, and we shall, therefore, exclude them.⁶

Accordingly, we find that all clerical employees of the East Chicago (Indiana Harbor) and South Chicago plants of the Company, including draftsmen, but excluding all employees listed on Appendix "A" attached hereto, all employees on the staffs of the manager and general superintendents, all employees of the industrial relations, safety, employment, insurance, and plant-protection departments, industrial and time-study engineers, telephone operators, confidential, administrative, professional, and technical employees, salaried payroll clerks, superintendents' confidential clerks, secretaries and stenographers listed on Appendix "B" attached hereto, clerical employees covered by the agreement between the Company and the Union dated August 13, 1942, 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, 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 employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.⁷

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 The Youngstown Sheet and Tube Company, East Chicago, Indiana, and South Chicago, Illinois, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direc-

⁶ See *Matter of Potash Company of America, supra*; *Matter of Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

⁷ The record indicates that in the event the Union is chosen as the representative of the employees in the unit set forth in Section IV, above, it will represent such employees through its Local No. 3127. We shall, therefore, designate the Union on the ballot as "Local No. 3127, United Steelworkers of America, affiliated with the Congress of Industrial Organizations."

tion, 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 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 or not they desire to be represented by Local No. 3127, United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

Appendix A

Accounting Department----	Works Accountant
	Assistant Works Accountant
	Assistant to Works Accountant
	Chief Cost Accountant
	Chief Inventory Accountant
	Salary Pay Roll Clerks
	Stationary Foreman
	Chief Stenographer & Secretary
	Chief Clerks
	Ass't-Gen'l Chief Clerk
	Cashier
	Storekeepers
	G. O. Audit Clerks
	General Chief Clerk
	Scale Inspector Foreman
Order & Schedule Department-----	Chief Schedule Clerk
	Chief Billing Clerk
	M. M. Schedule Chief Clerk
	Pipe Schedule Chief Clerk
	Superintendent
	Chief Shipper
	Chief Manifest Clerk
	Rolling Mill Shipper
	Merchant Mill Shipper
	Schedule Clerk M. M.
	Tube Mill Shipper

	Schedule & Shipping Tin Mill
	Shipper—Tin Mill
	Assistant Shipper—Tin Mill
	H. S. Chief Schedule Clerk
	H. S. Provider (Chief)
	H. S. Shipper
	H. S. Assistant Shipper
Engineering Department ---	Chief Clerk
	Draftsmen (Squad Leaders)
Steam Engineering-----	Chief Clerk
Electrical Department-----	Chief Clerk
Mechanical Department-----	Chief Clerk
Restaurant-----	Chief Clerk
Open Hearth-----	Material Clerk (Manager)
Metallurgical Department--	Metallurgical Engineer
	Ass't Metallurgical Engineer
	Alloy Metallurgical Engineer
	Plant Metallurgist
	Metallurgist
	Alloy Metallurgist
	Metallurgical Investigator
	Alloy Laboratory Foreman
	Metallurgical Laboratory Foreman
	Alloy Assistant Metallurgist
	Metallographist
	Claim Superior
	Metallurgical Provider
Tin Side-----	Strip & Tin Mill Metallurgist
	Mill Metallurgist
	Cold Strip & Hot Strip Metallurgist
	Metallurgical Laboratory Foreman
	Tin Mill Metallurgical Lab. Foreman
	Metallurgical Laboratory Foreman
	Specification Metallurgist

Appendix B

Order & Schedule Department-----	Stenographer—Conf.
Engineering Department-----	Supt's. (Steno. and Sec'y.)
Electrical Department-----	Supt. Sec'y.
Coke Plant—Indiana Harbor-----	Supt. Clerk
Coke Plant—South Chicago-----	Supt. Clerk
Blast Fce.—Indiana Harbor-----	Supt. Clerk

1400 DECISIONS OF NATIONAL LABOR RELATIONS BOARD

Blast Fce.—South Chicago.....	Supt. Clerk
Open Hearth.....	Supt. Clerk
Rolling Mill.....	Supt. Secretary
Merchant Mill.....	Supt. Clerk
Inspection Department.....	Supt. Secretary
Bessemer Department.....	Supt. Clerk
Metallurgical Department	Supt. Clerk
	Stenographer (Sec'y.)
Transportation Department	Traffic Clerk