

IN THE MATTER OF ACME STEEL & MALLEABLE IRON WORKS, DIVISION OF  
BUFFALO BRAKE BEAM COMPANY *and* UNITED STEELWORKERS OF  
AMERICA, C. I. O.

*Case No. 3-R-723.—Decided February 23, 1944*

*Mr. Harold V. Potter*, of Buffalo, N. Y., for the Company.

*Mr. James R. Carlton*, of Buffalo, N. Y., for the C. I. O.

*Mr. Herbert W. Clements*, of Rochester, N. Y., for the A. F. L.

*Mr. David V. Easton*, 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 C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Acme Steel & Malleable Iron Works, Division of Buffalo Brake Beam Company, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on January 26, 1944. The Company, the C. I. O., and International Molders and Foundry Workers Union of North America, Local 353, A. F. L., herein called the A. F. L., 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

Buffalo Brake Beam Company, a New York corporation, is engaged in the manufacture of steel and malleable castings. We are concerned

herein with its Acme Steel & Malleable Iron Works Division, located in the City of Buffalo, New York. Between November 1 and November 31, 1943, the Company used at its Buffalo, New York, plant, raw materials valued at approximately \$68,487, of which about 30 percent represents shipments made to the company from points outside the State of New York. During the same period the Company manufactured finished products valued at approximately \$220,000, of which about 35 percent represents shipments to points outside the State of New York. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations 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.

International Molders & Foundry Workers Union of North America, Local 353, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On December 1, 1943, the C. I. O. made written request to the Company seeking recognition as the representative of certain of its employees. The Company refused this request on the ground that it is currently operating under a collective bargaining agreement with the A. F. L., dated January 11, 1943. Said agreement provides, *inter alia*, that it "shall remain in full force and effect from the date of Agreement to December 31, 1943, thereafter from year to year, unless either party gives thirty (30) days' written notice of cancellation . . . ." Both the Company and the A. F. L. urge this contract as a bar to the proceeding herein. Whether or not notice pursuant to the contract may be given at any time during its operation is of no moment in this proceeding,<sup>1</sup> since the C. I. O. presented its claim for recognition at least 30 days prior to the yearly automatic renewal date thereof. Under these circumstances, the contract of January 11, 1943, does not constitute a bar to this proceeding.<sup>2</sup>

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the A. F. L. and the C. I. O. each represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>3</sup>

<sup>1</sup> *Matter of Superior Coach Corp.*, 39 N. L. R. B. 926

<sup>2</sup> *Matter of Mill B, Inc.*, 40 N. L. R. B. 346

<sup>3</sup> The Field Examiner reported that the C. I. O. submitted 159 designations, of which 147 bore apparently genuine original signatures and contained the names of persons appearing upon the Company's pay roll of December 7, 1943; that said pay roll contained the names of 350 persons within the appropriate unit, and that the A. F. L. relies upon its contract with the Company dated January 11, 1943, for the establishment of its interest.

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

Substantially in accordance with an agreement of the parties, we find that all production and maintenance employees of the Company, excluding executives, foremen, assistant foremen, pattern makers, janitors, watchmen, and standards department employees, technical employees, office and clerical employees, full-time inspectors, 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 employees 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.<sup>4</sup>

#### 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 Acme Steel & Malleable Iron Works, Division of Buffalo Brake Beam Company, 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 Third 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

<sup>4</sup>The A. F. L. requested that it be designated upon the ballot as "International Molders and Foundry Workers Union of North America, A. F. of L., Local 353," and the C. I. O. requested that it be designated thereon as "United Steelworkers of America, C. I. O." Both requests are hereby granted.

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 election, to determine whether they desire to be represented by United Steelworkers of America, C. I. O. or by International Molders and Foundry Workers Union of North America, A. F. of L., Local 353, for the purposes of collective bargaining, or by neither.

· Mr. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.