

In the Matter of JAMESTOWN MALLEABLE IRON CORPORATION and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 3-R-814.—Decided July 26, 1944

Mr. J. Russell Rogerson, of Jamestown, N. Y., for the Company.

Mr. Ray McLaughlin, of Dunkirk, N. Y., for the Steelworkers.

Mr. Vincent Colera, of Jamestown, N. Y., for the Association.

Mr. Bernard Goldberg, 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 Jamestown Malleable Iron Corporation, Jamestown, 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 Jamestown, New York, on June 23, 1944. The Company, the Steelworkers, and Malleable Iron Welfare & Athletic Association of Employees, Inc., herein called the Association, 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. At the hearing the Trial Examiner reserved for the Board a ruling on the Company's motion to dismiss the petition. For the reasons hereinafter stated, the said motion is hereby denied. 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

Jamestown Malleable Iron Corporation, a New York corporation, is engaged in the manufacture of malleable iron castings at its plant

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in Jamestown, New York. From March 1, 1944 to May 31, 1944, the Company used in its manufacturing processes raw materials valued in excess of \$110,000, of which more than 50 percent was shipped into the State of New York from points outside the State. During the same period of time, the Company manufactured finished products valued in excess of \$600,000, of which more than 80 percent was shipped 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, affiliated with the Congress of Industrial Organizations, and Malleable Iron Welfare & Athletic Association of Employees, Inc., unaffiliated, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has recognized the Association as the exclusive bargaining representative of its employees since 1936. The most recent contract between the Company and the Association, entered into on June 28, 1943, for a period of 1 year, provided for the automatic renewal thereof from year to year, unless either party gave notice of a desire to change the terms of the contract at least 30 days prior to the annual expiration date. Neither party has served notice of a desire to make any changes in the contract. On May 22, 1944, or more than 30 days prior to the initial expiration date of the contract, the Steelworkers notified the Company of its claim to represent a majority of the latter's employees and requested the start of negotiations for a new contract. On May 25, 1944, the Steelworkers filed the instant petition with the Regional Director. The Company maintains that the contract between it and the Association has been lawfully extended to June 28, 1945, as the result of the operation of the automatic renewal clause and therefore constitutes a bar to the present proceeding. The Association apparently supports the Company's contention. Since the Steelworkers notified the Company of its claim to represent a majority of its employees prior to the automatic renewal of the contract between the Company and the Association, the purported renewal does not constitute a bar to the present proceedings.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Steelworkers represents a substantial number of employees in the unit hereinafter found appropriate.²

¹ See *Matter of Hall Manufacturing Company*, 40 N. L. R. B. 14; *Matter of Kingan & Co., Inc.*, 37 N. L. R. B. 716.

² The Field Examiner reported that the Steelworkers submitted 248 application-for-membership cards; that the names of 217 persons appearing on the cards were listed on

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

We find, in substantial agreement with the stipulation of the parties, that all production and maintenance employees, excluding superintendents, foremen, assistant foremen, time study men, plant protection 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 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.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Jamestown Malleable Iron Corporation, Jamestown, New York, an election by

the Company's pay-roll of May 27, 1944, which contained the names of 477 employees in the appropriate unit; and that the cards of the persons whose names appear on the Company's pay-roll are dated as follows: 41 in April 1944; and 176 in May 1944. The Association relies on its contract to establish its interest. In support of its motion, the Company also contends that the employees themselves have not disclosed the loss of a majority by the Association and that the report of the Field Examiner shows that the Steelworkers does not represent a majority of the Company's employees. The Company misconstrues the nature of the present proceeding. The Board is not being called upon to certify the Steelworkers as the majority representative on the basis of the proof submitted to the Regional Director or his representative. The Steelworkers are requesting that the Board conduct a secret ballot among the Company's employees to determine which of the competing unions represents a majority of the Company's employees in the appropriate unit. To be entitled to such an election under the Board's procedure, the petitioning union need not submit evidence of majority representation. It is sufficient that it show substantial representation among the employees sought to be represented; this the Steelworkers has done.

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 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 they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by Malleable Iron Welfare & Athletic Association of Employees, Inc., unaffiliated, 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.