

In the Matter of PACIFIC STATES STEEL CORPORATION and UNITED  
STEEL WORKERS OF AMERICA, DISTRICT 38, C. I. O.

*Case No. 20-R-1093.—Decided August 5, 1944*

*Mr. Charles V. Cole*, of San Francisco, Calif., and *Mr. Marion Newman*, of Niles, Calif., for the Company.

*Messrs. Leo J. Oberhaus*, and *Joseph Angelo*, of Oakland, Calif., for the Steelworkers.

*Mr. Charles J. Janigian*, of San Francisco, Calif., for the Blacksmiths and IBEW.

*Mr. P. H. McCarthy, Jr.*, of San Francisco, Calif., for the Engineers.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, District 38, C. I. O., herein called the Steelworkers, alleging that a question affecting commerce had arisen concerning the representation of employees of Pacific States Steel Corporation, Niles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John Paul Jennings, Trial Examiner. Said hearing was held at San Francisco, California, on June 30, 1944. The Company, the Steelworkers, Niles Local No. 591, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, A. F. L., herein called the Blacksmiths, International Brotherhood of Electrical Workers, Local 595, A. F. L., herein called the IBEW, and International Union of Operating Engineers, Local 3, A. F. L., herein called the Engineers, 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 rulings on the separate motions of the Blacksmiths and the Engineers to dismiss the petition as to them. For the reasons

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hereinafter stated, the motion by the Blacksmiths is hereby denied and the motion by the Engineers is hereby granted. 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

Pacific States Steel Corporation is a California corporation engaged in the manufacture of steel and steel products at its plant in Niles, California. During the calendar year 1943, the Company purchased raw materials, consisting principally of scrap iron, valued at approximately \$2,000,000, of which 35 percent represents shipments into the State of California from points outside the State. In the same period of time, the Company sold finished products valued at approximately \$4,500,000, of which about 30 percent was shipped to customers outside the State of California.

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, District 38, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Niles Local No. 591, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, International Brotherhood of Electrical Workers, Local 595, and International Union of Operating Engineers, Local 3, all affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

### III. THE QUESTIONS CONCERNING REPRESENTATION

For a number of years the Company has recognized the Blacksmiths and the Engineers as the bargaining representatives of its employees, the Engineers for the employees coming within its jurisdiction and the Blacksmiths for all other production and maintenance employees, including the electricians. Present labor relations are governed by 2 contracts, one with the Blacksmiths signed on July 1, 1942, and the other with the Engineers executed on October 12, 1942. Both contracts are for a term of 1 year from the date of signing and are renewable automatically from year to year thereafter, unless either party gives written notice of a desire to change or terminate the contract at least 30 days prior to the yearly expiration date. Both con-

tracts were renewed automatically in 1943. On May 24, 1944, the Blacksmiths notified the Company, in writing, of its desire to alter and amend its contract. On May 29, 1944, the Steelworkers informed the Company of its claim to represent a majority of the Company's employees and requested recognition as the exclusive bargaining representative. The Blacksmiths contends that its contract with the Company is a bar to the present proceeding. It asserts that its written notice to the Company is inoperative to terminate the contract because the Company failed to hold conferences with it within ten days following the notice, as provided by the contract. However, it is unnecessary to construe this provision of the contract. Since the Steelworkers apprised the Company of its claim to representation more than 30 days prior to the anniversary date of the contract, it is clear that the contract cannot operate as a bar to this proceeding.<sup>1</sup>

The Engineers, in support of its motion to dismiss the petition, maintains that the Steelworkers has failed to prove any substantial representation among the employees in the unit presently represented by it and that, therefore, no representation question exists in such unit. The employees now represented by the Engineers consist generally of cranemen and locomotive engineers. There are at present 25 employees in this unit. The Steelworkers has submitted designations from only 2 of these 25 employees, or 8 percent of the total. On the other hand, the Engineers submitted designations from each of the 25 employees including the 2 who had previously designated the Steelworkers, all but 3 of them dated in June 1944. A witness for the Engineers also testified that all 25 employees in the unit are members in good standing of the Engineers. In view of the well established bargaining history, we are of the opinion that the unit currently represented by the Engineers is appropriate for the purposes of collective bargaining; and, since the Steelworkers has made no substantial showing of representation among such employees, we find that no question concerning the representation of employees in the aforesaid unit has arisen, within the meaning of Section 9 (c) of the Act.

A statement of a Board agent, and other evidence introduced at the hearing indicate that the Steelworkers and the IBEW represent a substantial number of employees in the units claimed by each to be appropriate.<sup>2</sup>

<sup>1</sup> *Matter of National Gypsum Company*, 57 N. L. R. B. 422; *Matter of Hall Manufacturing Company*, 40 N. L. R. B. 14; *Matter of Kangan & Co., Inc.*, 37 N. L. R. B. 716.

<sup>2</sup> The Field Examiner reported that the Steelworkers submitted 107 application cards; that the names on 105 of the cards also appeared on the Company's pay roll of June 3, 1944, that 103 of the names on the cards were those of employees in the unit now represented by the Blacksmiths which unit is comprised of 125 persons; that 2 of the names were of employees in the unit claimed by the Engineers which is comprised of 25 persons; and that the cards were dated as follows: 1 in April 1944, 101 in May 1944, 2 in June 1944, and 1 undated.

At the hearing, an official of the IBEW testified that 2 of the 3 electricians employed in the plant were members in good standing of his union, and that the third had a union

We find that questions affecting commerce have 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 DETERMINATION OF REPRESENTATIVES

The Steelworkers seeks a unit comprising all production and maintenance employees excluding office and clerical employees, guards and all supervisory personnel. The Blacksmiths is in agreement generally with the unit sought by the Steelworkers, except that it would also exclude the electricians and the employees now represented by the Engineers. The IBEW claims that the 3 electricians constitute an appropriate unit. The Company takes no position with respect to the unit question.

As previously stated, the Blacksmiths has represented for a number of years all production and maintenance employees excluding those represented by the Engineers. However, the Blacksmiths, which has represented the electricians, is agreeable to the IBEW's proposed creation of a separate unit for such employees.<sup>3</sup> The electricians are members of a well recognized, long established craft group. Their duties differ from those of other maintenance employees and their hourly remuneration is substantially above that of other production and maintenance employees. Considering this case *de novo*, the electricians may function effectively as a separate unit for the purposes of collecting bargaining. On the other hand, the bargaining history with the Company shows that the electricians may be adequately represented as part of a broader production and maintenance unit. In this situation, our determination of the unit issue with respect to these employees will depend, in part, upon their own desires as expressed in the election hereinafter directed among them.

We shall direct that separate elections by secret ballot be held among the employees in each of the voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

1. All electricians, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All remaining production and maintenance employees including "supervisor melters"<sup>4</sup> but excluding all employees now represented by

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authorization to work in the territory. The Blacksmiths relies on its contract to establish its interest.

<sup>3</sup> Since we have heretofore found that no question concerning representation now exists in the unit currently represented by the Engineers, no further discussion regarding the consequent exclusion of these employees from the unit hereinafter found appropriate is deemed necessary

<sup>4</sup> The parties agreed that these employees have no supervisory duties within our customary definitions.

the Engineers, office and clerical employees, guards, 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.

As stated above, there will be no final determination of appropriate unit or units pending the results of the elections.

### DIRECTION OF ELECTIONS

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, 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 Pacific States Steel Corporation, Niles, California; separate elections 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 Twentieth 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 following groups of employees of the Company 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 elections, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All electricians, to determine whether they desire to be represented by United Steelworkers of America, District 38, affiliated with the Congress of Industrial Organizations,<sup>5</sup> or by International Brotherhood of Electrical Workers, Local 595, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

(2) All remaining production and maintenance employees, including "supervisor melters" but excluding all employees now represented by the Engineers, office and clerical employees, and guards, to determine whether they desire to be represented by United Steelworkers of

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<sup>5</sup> The Steelworkers' request that it appear on the ballots as United Steelworkers of America, C. I. O., is hereby granted.

America, District 38, affiliated with the Congress of Industrial Organizations,<sup>6</sup> or by Niles Local 591, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Elections.

[See *infra*, 57 N. L. R. B. 1220 for Amendment to Decision and Direction of Election.]

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<sup>6</sup> See footnote 5, *supra*.