

In the Matter of DURASTEEL COMPANY and DISTRICT 50, UNITED MINE
WORKERS OF AMERICA

Case No. 14-R-957.—Decided August 23, 1944

Messrs. G. E. Lyons, R. C. Titter, and G. E. Anderson, all of Hannibal, Mo., for the Company.

Messrs. Dan Winger and E. J. Bean, both of Hannibal, Mo., for District 50.

Mr. Victor B. Harris, of St. Louis, Mo., and Mr. Lester M. Maupin, of Hannibal, Mo., for the Steelworkers.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, alleging that a question affecting commerce had arisen concerning the representation of employees of Durasteel Company, Hannibal, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at Hannibal, Missouri, on July 18, 1944. The Company, District 50, and United Steelworkers of America, CIO,¹ herein called the Steelworkers, 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

Durasteel Company, a Missouri corporation, operates two plants under unified management at Hannibal, Missouri; one plant is en-

¹ The record indicates that Local 2647 is the local organization more particularly concerned herein.

gaged in the manufacture of ordnance bombs and bomb fins, and the other is engaged in the manufacture of bomb parts and refrigerators. During the 6 months period ending March 31, 1944, the Company purchased for use, at its Hannibal plants, steel, paint, cartons, and other raw materials valued in excess of \$500,000, of which approximately 90 percent was shipped to the Hannibal plants from points outside the State of Missouri. During the same period the Company sold finished products valued in excess of \$800,000, of which about 99 percent was shipped to points outside the State of Missouri.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

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

On or about April 10, 1944, District 50 requested recognition from the Company as the collective bargaining representative of certain of its employees, and further requested that the Company not renew its contract with the Steelworkers. The Company made no reply to this request and takes the position that it cannot recognize District 50 until said labor organization is certified by the Board.

Following an election held in 1942, the Steelworkers was certified by the Board as the collective bargaining representative of the Company's production and maintenance employees. Thereafter, it executed a collective bargaining agreement with the Company which terminated on May 31, 1943. On June 7, 1943, a renewal contract was executed by the Company and the Steelworkers, providing, *inter alia*, that it was to remain in effect until May 31, 1944, and that it was to renew automatically thereafter in the absence of notification, by either party thirty (30) days before the expiration of the agreement, of a desire to change its terms. On December 27, 1943, District 50 filed a petition for investigation and certification of representatives. The Regional Director refused to issue Notice of Hearing on this petition on the ground that it was prematurely filed, and that the contract of June 7, 1943, constituted a bar to the requested determination. Subsequently as hereinabove indicated, District 50 made a request for recognition from the Company on April 10, 1944. On May 4, 1944, an informal conference was held at the St. Louis Regional Office of the

Board which was attended by representatives of the Board, the Company, District 50, and the Steelworkers. At this conference the Steelworkers requested that the Board check the designations submitted by District 50 against a pay roll of the Company. The Board's representative agreed to do so and, apparently, agreed to notify the parties with respect to his findings. No formal notification of the results of the check of the designations of District 50 was served upon the parties until sometime after June 30, 1944. Meanwhile, the Steelworkers commenced negotiations with the Company toward the latter part of May, leading to a new contract. On June 15, 1944, these parties executed a new agreement providing for a 2-year term, expiring May 31, 1946.²

The Steelworkers contends that its contract of June 15, 1944, constitutes a bar to this proceeding, arguing that both it and the Company acted reasonably in assuming that, since they had not heard from a representative of the Board with respect to the check of the designations submitted by District 50 in support of the petition filed by it, this petition was being dismissed administratively, and they were at liberty to negotiate for a new contract. We do not agree. No formal notification had been served upon the parties that the petition had been dismissed. District 50, upon failure to receive notification from a representative of the Board with respect to the results of the check of its designations, made direct inquiry of the Regional Office, whereas both the Company and the Steelworkers failed to do so, although reasonable prudence would seem to require such action. Counsel for the Steelworkers visited the Regional Office on several occasions between May 4, the date of the conference, and the date of an issuance of the Notice of Hearing herein, and apparently did not ascertain the status of this proceeding. We find that the contract of June 15, 1944, between the Company and the Steelworkers was executed subsequent to notice of a claim of a third party and while a proceeding involving the Company's employees was pending. Under such circumstances, the contract of June 15, 1944 does not constitute a bar to a current determination of representatives.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, as supplemented by a statement of the Trial Examiner made at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.³

² The contract of June 15, 1944, as well as that of June 7, 1943, contains a closed-shop, maintenance-of-membership clause.

³ The Field Examiner reported that District 50 submitted 110 designations bearing signatures appearing upon the Company's pay roll for the period ending April 22, 1944. The Trial Examiner reported that District 50 submitted 4 additional designations at the hearing bearing names appearing upon said pay roll. The record discloses that the Company employs approximately 480 employees in the unit hereinafter found appropriate. The Steelworkers relies upon its contractual relations with the Company for the establishment

We find that a question affecting commerce has arisen concerning 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 at the hearing, we find that all hourly paid production and maintenance employees engaged at the Hannibal plants of the Company, including line inspectors, but excluding office clerks and stock room employees handling records, salaried employees, salesmen, watchmen, guards, janitors, floor inspectors, plant manager, assistant plant manager, foreman, assistant foreman, 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.

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 the 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 Durasteel Company, Hannibal, Missouri, 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 Re-

of its interests The record discloses that the Company has an abnormally large turnover of employees, and that since April 22, 1944, 135 employees terminated their employment with the Company and 250 new employees were engaged by the Company Under these circumstances, we find that the showing of District 50 is substantial The Steelworkers moved at the hearing that a new check be made of the designations submitted by District 50, basing its motion upon the turn-over in personnel of the Company. We are satisfied that, in view of the union security clauses contained in the 1943 and 1944 contracts between the Company and the Steelworkers, District 50 has submitted a sufficient number of designations to warrant the entertainment of this proceeding

gional Director for the Fourteenth 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 District 50, United Mine Workers of America, or by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

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