

In the Matter of STRUTHERS WELLS CORPORATION and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 6-R-1000.—Decided November 23, 1944

Mr. Jerome L. Black, of Pittsburgh, Pa., for the Board.
Captain A. E. Wheat, of Titusville, Pa., for the Company.
Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. John H. Graney*,
of Erie, Pa., for the Steelworkers.
Mr. A. G. Skundor, of Pittsburgh, Pa., for the IAM.
Mr. Joseph A. Padway, by *Mr. Robert A. Wilson*, of Washington,
D. C., for the Blacksmiths.
Mr. R. C. Sermon, of Erie, Pa., for the Boilermakers.
Mr. George H. Poulson, of Erie, Pa., for the IBEW.
Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

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 Struthers Wells Corporation, Titusville, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Meadville, Pennsylvania, on October 13, 1944. The Board, the Company, the Steelworkers, and International Association of Machinists, A. F. L., herein called the IAM, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, affiliated with the American Federation of Labor, herein called the Blacksmiths, International Brotherhood of Electrical Workers, A. F. L., herein called the IBEW, and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America, herein called the Boilermakers, herein referred to collectively as the Intervenors, 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. 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

Struthers Wells Corporation is a Maryland corporation with its principal place of business in Titusville, Pennsylvania. It operates plants located in Warren, and Titusville, Pennsylvania. Only the Titusville plant is involved herein. The Company engages in the manufacture, sale, and distribution of steering gears, crankshafts, winches, fire tube boilers, and pressure vessels. During the past year the Company purchased raw and other materials valued at approximately \$6,954,353, of which approximately 40 percent came from points outside the Commonwealth of Pennsylvania. During the same period the Company manufactured finished products valued at approximately \$21,994,195, of which approximately 20 percent was shipped to points outside the Commonwealth of Pennsylvania.

The Company admits for the purpose of this proceeding 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, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, International Brotherhood of Electrical Workers, and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America, all affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company and the A. F. L. have been bargaining collectively since 1937, with resultant contracts. On June 18, 1943, the latest collective bargaining agreement was executed between the Company and the Metal Trades Department of the American Federation of Labor, representing "individually and collectively" the Intervenors. The contract was signed by the Company, the Metal Trades Department, the IAM, the IBEW, the Boilermakers, and the Blacksmiths.

The Company therein recognized the Intervenors as the sole collective bargaining representative of its employees. The contract was to remain in full force and effect for 1 year from date, either party desiring to change, modify, or terminate the contract to notify the other party in writing 30 days prior to the current expiration date. On May 17, 1944, the Intervenors advised the Company of their desire to negotiate changes in the contract.

In a letter dated May 17, 1944, the Steelworkers informed the Company that it represented a majority of the Company's employees and requested bargaining rights. On May 19, 1944, the Company refused the request on the ground that it had a collective bargaining agreement with the Metal Trades Department. On May 27, 1944, negotiations were begun with respect to proposed changes in the contract. By June 29, 1944, all provisions except wage increases, shift premiums, vacation allowances, and effective date were agreed upon by the parties. These were referred to the National War Labor Board, where they are presently pending. On June 29, 1944, the Intervenors and the Company agreed orally to extend the contract of June 18, 1943, until the National War Labor Board decided the issues. The Blacksmiths contends that the petition should be dismissed, since an election, if now directed, would penalize the Intervenors for unavoidable delays consequent upon their acceptance of orderly procedures established by governmental authority for the adjustment of differences with an employer. We find no merit in this contention. The mere pendency of a dispute before the National War Labor Board does not operate to divest this Board of jurisdiction in a representation proceeding. In those cases where the Board has declined to order an election in the presence of a dispute before the National War Labor Board, other facts were present which do not exist in the instant case.¹ Here, the Intervenors have had an opportunity to obtain, and have obtained, substantial benefits for the employees of the Company as their exclusive representative.² We find that the pendency of the dispute before the National War Labor Board constitutes no bar to an election at this time. We are also of the opinion that since the Intervenors on May 17, 1944, duly notified the Company that they desired to negotiate changes in the 1943 contract, and since the Steelworkers on the same date requested bargaining rights as bargaining representative of its employees, the 1943 contract, and its oral extension,³ cannot operate as a bar to this proceeding.

¹ See *Matter of Allis Chalmers Mfg Co.*, 50 N. L. R. B. 306, *Matter of Kennecott Copper Corp. Nevada Mines Division*, 51 N. L. R. B. 1140, *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268, *Matter of Ft Dodge Creamery Company*, 53 N. L. R. B. 928, *Matter of Columbia Protokosite Co, Inc*, 53 N. L. R. B. 560

² See *Matter of Landis Machine Company*, 54 N. L. R. B. 1440, and cases cited therein

³ See *Matter of Victor, Inc.*, 46 N. L. R. B. 1035.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Steelworkers represents a substantial number of employees in the unit it alleges to be appropriate.⁴

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 Sections 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Steelworkers contends that all production and maintenance employees, excluding foremen, assistant foremen, policemen, watchmen, clerical and salaried employees, and all supervisory employees, constitute an appropriate unit. The Intervenor seeks separate bargaining units for the employees within their respective jurisdictions. They are in agreement, however, with respect to the specific exclusions sought by the Steelworkers. The Company has adopted a neutral position concerning the propriety of a plant-wide unit as opposed to separate units.

The Company's contractual relations, discussed in Section III, *supra*, have been with the Intervenor, each of whom is named as a contracting party.⁵ In the contract, wage scales appear under separate headings, one for each of the four groups represented by the Intervenor. Pursuant to the contract, grievances are handled separately by each of the Intervenor for the groups of employees coming within their respective jurisdictions; seniority is similarly confined to the respective groups; and there is no interchange of personnel among the four groups other than in cases of emergency. All other provisions, such as hours of employment, overtime, vacations, and other conditions of employment, are set out in the contract generally for all employees. Thus, the Intervenor have acted both jointly and severally in the course of their bargaining relations with the Company. It is evident, therefore, that the bargaining history does

⁴ The Field Examiner reported that the Steelworkers submitted 749 authorization cards, 23 dated in April, 74 in May, 511 in June, 136 in July, and 2 in August 1944, 3 undated, of which 659 bore names of persons appearing on the Company's pay roll of August 6, 1944. There are approximately 1,293 employees in the unit alleged by the Steelworkers to be appropriate. The IBEW, the IAM, the Blacksmiths, and the Boilermakers presented no evidence in support of representation among the employees, relying upon the contract as evidence of their interest.

The IAM contends that the Steelworkers' demand for bargaining rights is not entitled to any weight and that the petition should be dismissed since the Steelworkers did not have the cards to make a *prima facie* showing of majority or even of substantial interest on the date of its demand. We find this contention to be without merit. We have repeatedly held that petitioning unions need not make a *prima facie* showing of majority since a showing of substantial representation by the petitioning union is sufficient to raise the possibility that it may be selected by the majority. See *Matter of Basic Magnesium, Inc.*, 48 N. L. R. B. 1310, and cases cited therein. The record indicates that the Steelworkers has made a substantial showing.

⁵ Although the Metal Trades Department is also named as a contracting party in the contract, the contract recognizes the "various craft organizations" as the sole collective bargaining representative, and the Metal Trades Department has not conducted any bargaining negotiations with the Company. It did not appear at the hearing.

not conclusively establish the appropriateness of separate units or a single unit, and that the groups respectively represented by the Intervenors may either function as separate units or as a single unit for collective bargaining purposes. Under these circumstances we shall permit the scope of the bargaining unit or units to be determined in part by the desires of the employees themselves to be ascertained by means of separate elections.

Upon the basis of the entire record and in conformance to the foregoing conclusions, we shall order the conduct of elections among the employees of the Company within each of the groups listed below,⁶ including expeditors,⁷ working foremen,⁸ and gang leaders, but excluding watchmen; policemen, clerical and salaried employees, chief inspectors, timekeepers, shop clerical workers, foremen, assistant foremen, 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:

(1) All tool makers, finishers, machinists, semi-finishers, roughers, assemblers, specialists, single unit operators, learners, apprentices, general helpers in the machine shop, carpenters, pipe fitters, painters, mechanical maintenance men assigned to the machine shop, janitors in the machine shop, firemen in the Iron Works Division, truck drivers, storeroom helpers attached to the machine shop, machine shop inspectors, welders in the machine shop, and planer operators in the machine shop;

(2) Boilermakers, fitters, fitter bolters, welders, fitter welders, chipper welders, learner welders, punch operators, air riveters, shears operators, roller operators, plate handlers, stack makers or sheet metal workers, sand blasters, X-ray operators, press brake operators, air grinders, oxygen cutters, acetylene burners, flangers and their helpers, hydraulic press operators and their helpers, loaders, testers, layers-out, tube setters, chippers, chipper and caulkers, chipper learners, janitor of boilermaker department, storeroom helpers attached to boilermaker department, boilermaker department inspectors, planer operators, and hydraulic riveters, but excluding the instructor;⁹

(3) Blacksmiths, blacksmith hammer drivers, blacksmith apprentices, blacksmith helpers, press and hammersmiths, press and hammer drivers, press and hammer heaters, coal plant operators, furnace operators, heat observers, coal pullers, jib crane operators, brosius operators, firemen in the Forge Work Division, oxygraph operator and

⁶ The parties agreed that the voting groups should be delineated as hereinafter set forth, which is in substantial accordance with the 1943 contract executed between the Company and the Intervenors

⁷ The expeditors include four working in the machine shop and one working in the boiler shop

⁸ The term "working foremen" includes supervisors, shift foremen, and subforemen.

⁹ J. W. Brosius

helper, heat treat and Forge Shop general helpers, maintenance blacksmiths, and floormen;

(4) All electricians, electrical maintenance men, cranemen, crane learners, and manipulators, but excluding jib crane operators.

We will make no final determination of the appropriate unit or units pending the results of the elections. If the Steelworkers is chosen as the bargaining representative of the employees in each of the four groups, we shall find a single unit appropriate; otherwise, each group shall constitute a separate appropriate unit.

Those eligible to vote in the elections which we shall direct shall be the employees of the Company described in the voting groups above 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 therein.

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 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 Struthers Wells Corporation, Titusville, Pennsylvania, 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 Sixth 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 voting groups below 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, and including further expeditors, working foremen, and gang leaders, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, and excluding further watchmen, policemen, clerical and salaried employees, timekeepers, shop clerical workers, chief inspectors, foremen, assistant foremen, 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:

(1) All tool makers, finishers, machinists, semi-finishers, roughers, assemblers, specialists, single unit operators, learners, apprentices,

general helpers in the machine shop, carpenters, pipe fitters, painters, mechanical maintenance men assigned to the machine shop, janitors in the machine shop, firemen in the Iron Works Division, truck drivers, storeroom helpers attached to the machine shop, machine shop inspectors, welders in the machine shop, and planer operators in the machine shop to determine whether they desire to be represented by United Steelworkers of America, C. I. O., or by International Association of Machinists, A. F. L., for the purposes of collective bargaining, or by neither;

(2) Boilermakers, fitters, fitter bolters, welders, fitter welders, chipper welders, learner welders, punch operators, air riveters, shears operators, roller operators, plate handlers, stack makers or sheet metal workers, sand blasters, X-ray operators, press brake operators, air grinders, oxygen cutters, acetylene burners, flangers and their helpers, hydraulic press operators and their helpers, loaders, testers, layers-out, tube setters, chippers, chipper and caulkers, chipper learners, janitor of boilermaker department, storeroom helpers attached to boilermaker department, boilermaker department inspectors, planer operators, and hydraulic riveters, but excluding the instructor to determine whether they desire to be represented by United Steelworkers of America, C. I. O., or by International Brotherhood of Boilermakers, A. F. L., for the purposes of collective bargaining, or by neither;

(3) Blacksmiths, blacksmith hammer drivers, blacksmith apprentices, blacksmith helpers, press and hammersmiths, press and hammer drivers, press and hammer heaters, coal plant operators, furnace operators, heat observers, coal pullers, jib crane operators, brosius operators, firemen in the Forge Work Division, oxygraph operator and helper, heat treat and Forge Shop general helpers, maintenance blacksmiths, and floormen, to determine whether they desire to be represented by United Steelworkers of America, C. I. O., or by International Brotherhood of Blacksmiths, Drop Forgers and Helpers, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither;

(4) All electricians, electrical maintenance men, cranemen, crane learners, and manipulators, but excluding jib crane operators, to determine whether they desire to be represented by United Steelworkers of America, C. I. O., or by International Brotherhood of Electrical Workers, A. F. L., for the purposes of collective bargaining, or by neither.¹⁰

¹⁰ With exception of the Blacksmiths, the several unions requested that they appear on the ballots as set forth above