

In the Matter of A. B. C. STEEL EQUIPMENT Co., INC. and UNITED  
WIRE & METAL WORKERS UNION, LOCAL 36, C. I. O.

*Case No. 2-R-5005.—Decided November 28, 1944*

*Mr. David Garrison Berger*, of New York City, for the Company.  
*Frotter & Bagley*, by *Messrs. Julius E. Bagley* and *Milton Silverman*, of New York City, for the Union.

*Mr. Moe Rosen*, of New York City, for the A. F. of L.

*Mr. Louis R. Mercado*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Wire & Metal Workers Union, Local 36, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of A. B. C. Steel Equipment Co., Inc., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Lovett, Trial Examiner. Said hearing was held at New York City, on October 26, 1944. The Company and the Union appeared and participated.<sup>1</sup> 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:

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<sup>1</sup> Sheet Metal Workers International Association Local Union #137, A F of L, herein called the A F of L, presented a written motion to intervene, claiming an interest by virtue of a contract with the Company covering its employees for a term of 1 year ending October 31, 1938, and renewed for another term ending October 31, 1939. The A F of L, admitted that it had not dealt with the Company in any way since October 31, 1939, and that it had no membership among the Company's employees involved at this time. Under the circumstances, we believe that the Trial Examiner properly denied the motion to intervene.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

The Company, a New York corporation with its principal office in New York City, is engaged in the manufacture and installation of bulkheads and interior equipment for ships.<sup>2</sup> Its main plant is located in New York City,<sup>3</sup> with a branch plant in Mobile, Alabama. The Company annually receives at its New York plant, raw materials, consisting chiefly of steel and lumber and valued in excess of \$500,000, of which in excess of 75 percent is received from points outside the State of New York; it annually sells products, valued in excess of \$1,000,000, of which 75 percent is delivered 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 Wire & Metal Workers Union, Local 36, C. I. O., affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company denied the Union's request for recognition until it had been certified by the Board. A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

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

The Company and the Union agree that the appropriate unit should consist of all of the Company's production and maintenance employees,

<sup>2</sup> The Company formerly was in the steel-shelving business, but since 1940 has confined its operations exclusively to work on Government contracts.

<sup>3</sup> The New York plant, with which the present proceeding is concerned, employs approximately 40 workers, including clerical and supervisory.

<sup>4</sup> The Field Examiner reported that the Union submitted 24 cards, 17 of which bore apparently genuine original signatures; that the names of 11 persons appearing on the cards were listed on the Company's pay roll of a recent date, which contained the names of 30 employees in the appropriate unit; and that the cards were dated as follows: September, no year, 11; and August, no year, 6. At the hearing the Union submitted 4 additional authorization cards; a check against the same pay roll revealed that 1 of the 4 bore the name of a person on said pay roll. The Union contended that the remaining 3 cards were signed by persons employed by the Company after said pay roll was prepared.

including packing, receiving and shipping employees, porters, and tool and die designer, but excluding the office and clerical employees, the shop superintendent, and all supervisory employees; they disagree with respect to the status of several categories of employees. The Company would include, and the Union would exclude from the appropriate unit, the assistant engineer and factory coordinators,<sup>5</sup> purchasing agent and factory expeditors,<sup>6</sup> working foreman<sup>7</sup> and assistant working foremen.<sup>8</sup>

*Assistant engineer and factory coordinators.* The duties of these employees consist of making all drawings and blueprints required by the production employees for layout work. They are experienced workers who have received some training in drafting and engineering. They do their drafting work in the general offices, have the same hours as the office employees and are paid on a salary basis. Their duties require them to spend considerable time outside the Company's plant in connection with the designing of, and bidding for work on, vessels. The work of these employees is essentially technical and their interests are not in common with the production workers. We shall, therefore, exclude them from the unit.

*Purchasing agent and factory expediter.* The duties of this employee are to see that there is sufficient material on hand and to know where available materials are located. He routes materials from the warehouse into the factory and does some independent purchasing. He is paid on a salary basis, has his desk in the general office and his hours are the same as those of the office workers. His interests are more akin to those of the office workers and we shall accordingly exclude him from the unit.

*Working foreman.* This employee is under the shop superintendent, receives his orders from him, and transmits them to the general production employees. He is paid on an hourly basis and is the highest paid hourly employee. He works the same hours as do the general production workers and spends most of his time setting and checking dies and gauges and making certain that the output of the machines conforms to specifications. The Company insists that the plant is small, that this employee has no authority to recommend changes in the status of employees, and that he has never done so. The Union has offered no creditable evidence to the contrary. The supervisory duties of this employee are not such as to warrant his exclusion from the unit, and we shall include him therein.

<sup>5</sup> There are two employees in this classification.

<sup>6</sup> There is one employee in this classification.

<sup>7</sup> There is one employee in this classification.

<sup>8</sup> There are two employees in this classification. During the hearing the Union conceded that one of these employees could be included, but insisted that the other had supervisory authority.

*Assistant working foremen.* The Union concedes that one of these employees, J. Coli, may be included within the unit. His duties are essentially the same as the working foreman, except that he is not in charge of "lay out." He receives orders from the shop superintendent and transmits them to the workers; he is hourly paid. We shall include him within the unit.

The other employee in this category, John Keller, is in charge of the packing and shipping. His duties require him to check finished work and to see that the crating is properly done; he personally cuts materials, builds crates, loads trucks and cars, and builds braces for materials in cars. The Company insists that he does not have authority effectively to recommend changes in the status of employees; the Union adduced no creditable evidence to the contrary. Under the circumstances, we find that this employee does not come within our usual supervisory definition, and we shall include him within the unit.

We find that all the production and maintenance employees of the Company's New York plant, including packing, receiving and shipping employees, porters, the tool and die designer, the working foreman, and assistant working foremen, but excluding office and clerical employees, assistant engineer and factory coordinators, purchasing agent and factory expeditor, shop superintendent, and all or any 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 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 A. B. C. Steel Equipment Co., Inc., 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 Second 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 the 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 or not they desire to be represented by United Wire & Metal Workers Union, Local 36, C. I. O., for the purposes of collective bargaining.