

In the Matter of UTILITY ELECTRIC STEEL FOUNDRY and UNITED STEEL-
WORKERS OF AMERICA, UTILITY STEEL DIVISION, LOCAL 2018, C. I. O

Case No. 21-R-2513.—Decided November 29, 1944

Latham & Watkins, by *Mr. Paul R. Watkins*, of Los Angeles, Calif.,
for the Company.

Mr. Gilbert C. Anaya, of Los Angeles, Calif., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, Utility Steel Division, Local 2018, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Utility Electric Steel Foundry, Vernon, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Los Angeles, California, on November 10, 1944. The Company and the Union 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 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

Utility Electric Steel Foundry operates a plant at Vernon, California, where it is engaged in the manufacture of carbon and alloy steel castings. During its fiscal year ending in October 1944, the Company purchased raw materials valued in excess of \$500,000 approximately 60 percent of which originated outside the State of California.

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During the same period the Company produced products valued in excess of \$2,000,000, about 30 percent of which was shipped to points outside the State of California.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, Utility Steel Division, Local 2018, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees until such time as the Union is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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 agreement with the parties, that all production and maintenance employees of the Company, excluding office employees, guards, executives, 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, 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 means of 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.

The Company contends that its employees presently in the armed forces of the United States should be afforded an opportunity to vote.

¹ The Field Examiner reported that the Union presented 97 authorization cards bearing names of persons who appear on the Company's pay roll of October 15, 1944. There are approximately 240 employees in the appropriate unit.

We are not unmindful of the fact that employees on military leave retain their status as employees and, therefore, have a real interest in the choice of a bargaining representative. For this reason, our Direction of Election will provide, as has been the case in the past, that those who appear at the polls in the election shall be allowed to vote if otherwise eligible. The Company urges, however, to assure an opportunity for all employees in the armed forces to vote, a provision should be included in the Direction of Election requiring the Regional Director to mail ballots to each such employee. We find such a suggestion to be unfeasible for the reasons stated in *Matter of Mine Safety Appliances Co.*, 55 N. L. R. B. 1190. When it is determined that servicemen have returned to their employment in sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit in which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner, employees in the armed forces, who were unable to cast a vote, will be afforded an opportunity to affirm or change the bargaining agent selected in their absence.

The Company contends that employees who have not been employed for a period of 3 months should be ineligible to vote in the election. The Union urges that they be deemed eligible. It appears that new employees do not qualify for the Company's pension, insurance, sick and accident benefit plans until they have been employed for a period of 3 months. At the end of 3 months all new employees automatically acquire the status of regular employees. The record indicates that there is no substantial difference between the status of probationary and that of the regular employees. Accordingly, we find that they are eligible to vote in the election.

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 Utility Electric Steel Foundry, Vernon, California, 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 Twenty-first 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 any 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 Steelworkers of America, Utility Steel Division, Local 2018, C. I. O., for the purposes of collective bargaining.