

In the Matter of WHEELING STEEL CORPORATION and UNITED STEEL-
WORKERS OF AMERICA, C. I. O.

Cases Nos. 9-R-1490 and 9-R-1491 respectively.—Decided December
30, 1944

Thorp, Bostwick, Reed & Armstrong, by *Mr. Donald W. Ebbert*,
of Pittsburgh, Pa., for the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., and *Messrs. Paul Rusen*
and *J. C. Carroll*, of Wheeling, W. Va., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by the United Steelworkers of America, C. I. O., herein called the Union, each alleging that a question affecting commerce had arisen concerning the representation of employees of Wheeling Steel Corporation, Portsmouth, Ohio, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Portsmouth, Ohio, on October 27, 1944. The Company and the Union 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

Wheeling Steel Corporation, a Delaware corporation with its principal office and place of business at Wheeling, West Virginia, is en-
59 N. L. R. B., No. 240.

gaged in the manufacture, sale, and distribution of various steel products. The Company operates 10 plants located in various parts of the States of West Virginia and Ohio. The Company's plant located in Portsmouth, Ohio, is solely involved in this proceeding. During the past 12 months, the Company purchased for the Portsmouth Works raw materials valued in excess of \$1,000,000, of which approximately 50 percent was shipped from points outside the State of Ohio. During the same period, the Company produced at its Portsmouth Works finished products valued in excess of \$1,000,000, of which approximately 50 percent was shipped from points outside the State of Ohio.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTIONS CONCERNING REPRESENTATION

On or about August 22, 1942, the Union advised the Company that it represented a majority of the salaried and clerical employees in the Company's Portsmouth Works and wished to be recognized as their exclusive bargaining representative. Sometime during 1943, the Union also requested recognition as the exclusive bargaining representative of the Company's plant protection employees at its Portsmouth plant. The Company refused to recognize the Union on the ground that the units requested by it are not appropriate.

Statements of a Field Examiner for the Board, introduced into evidence at the hearing, indicate that the Union represents a substantial number of employees in each unit hereinafter found appropriate.¹

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.

¹ The Field Examiner reported (salaried and clerical employees—Case No. 9-R-1490) that the Union submitted 90 authorization cards, of which 70 bear names of persons listed on the Company's pay roll of October 2, 1944, which contained the names of 185 employees in the alleged appropriate unit; and that the cards were dated as follows: 19 in 1942; 32 in 1943; 5 in 1944; 14 undated.

The Field Examiner also reported (plant-protection employees—Case No. 9-R-1491) that the Union submitted 29 authorization cards, of which 25 bear names of persons listed on the Company's pay roll of October 2, 1944, which contained the names of 38 employees in the alleged appropriate unit; and that the cards were dated as follows: 1 in 1942; 13 in 1943; 11 undated.

IV. THE APPROPRIATE UNIT

The Union seeks the following units:

"All salaried and clerical workers of the Wheeling Steel Corporation, Portsmouth Works, Portsmouth, Ohio, including nurses, except for plant-protection employees and all supervisory employees * * *"; and

"All plant-protection employees in the Company's Portsmouth (Works), except for all supervisory employees * * *."

While the Company agrees upon the composition of the units as requested except for certain exclusions which it seeks from the clerical group and which are hereinafter discussed, it nevertheless contends that, in view of its present collective bargaining relationship with the Union, company-wide, multi-plant units of such employees are more appropriate.²

In connection with its activities, the Company operates 10 plants located in various parts of the States of Ohio and West Virginia.³ The Portsmouth Works, the only plant of the Company located in Portsmouth, Ohio, is supervised by a general manager, who is subject only to certain general controls exercised by the Company's main office at Wheeling, West Virginia. At this plant, the Company employs, among others, 185 clerical employees and 38 plant protection employees, all of whom are apparently residents of Portsmouth and its vicinity. Despite the facts that the operations of all the Company's plants are somewhat interrelated and certain labor policies and conditions of employment are controlled by the Company's main office, it appears that interchange of employees between the Portsmouth Works and the Company's other plants is negligible,⁴ and that the Portsmouth Works clerical and plant protection employees form homogeneous groups under separate supervision. Moreover, the record discloses that the Union's organizational efforts among these classifications of employees have extended throughout a period of several years, have been confined to the Portsmouth Works, and have resulted in a desire for representation on the part of a substantial number of employees.⁵

In view of the foregoing facts, we find that units of clerical employees and plant-protection personnel, limited in scope to the Ports-

² Since 1937 the Company has recognized the Union as the exclusive bargaining representative of all its production and maintenance employees in a company-wide, multi-plant unit. However, with respect to the employees now sought by the Union, there is no past history of collective bargaining.

³ The Company operates plants in the following places: Portsmouth, Steubenville, Yorkville, Martins Ferry, all in the State of Ohio; and Benwood, Beechbottom, Wheeling, all in the State of West Virginia.

⁴ Since 1943, the Company has transferred from one plant to another approximately 900 of its 18,000 workers employed in all of its 10 plants.

⁵ See footnote 1, *supra*.

mouth Works, are appropriate.⁶ However, our finding does not preclude a later determination that larger or company-wide units are also appropriate.

Since the Company agrees with the Union upon the composition of a unit of plant-protection personnel, we find that all plant-protection employees engaged at the Company's Portsmouth Works; 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

With respect to the controversy between the parties regarding certain exclusions from the clerical unit which are requested by the Company,⁷ we shall consider these employees in four groups: (1) employees alleged to have supervisory status; (2) employees who, while having supervisory titles, possess no supervisory authority; (3) employees alleged to have confidential status; and (4) employees who have no community of interest with the clerical workers.

*Employees alleged to have supervisory status*⁸

The record is clear that these employees supervise a considerable number of workers and have the authority effectively to recommend the hiring, discharging, and disciplining of employees under their supervision. In view of these facts, we shall exclude them.

*Employees who, while having supervisory titles, possess no supervisory authority*⁹

With reference to these employees, the record discloses that all receive a higher rate of pay than the other employees in their respective departments. However, except for some who, on occasion, act as supervisors in the absence of the heads of their respective depart-

⁶ See *Matter of Milliken-Tomlinson Co.*, 59 N. L. R. B. 786.

⁷ While there was some discussion in the record concerning the metallurgical laboratory head observer and observers (classifications #84 and #85, respectively), the parties ultimately agreed to exclude them from the unit.

⁸ This group consists of cashier's clerk (classification #2); janitor-supply man (classification #14); clerk-traffic department (classification #17); head clerks in the following departments: general yard switching (classification #67); coke plant (classification #73); blast furnace (classification #80); open hearth furnace (classification #82); blooming mill and billet yard (classification #88); machine shop (classification #91); range boiler and barrel shop (classification #94); range boiler and boiler shop sales (classification #104); rod and wire department (classification #115); army ordnance (classification #117).

⁹ This group consists of the following employees: assistant manager of the order and stock department (classification #22); assistant manager in the invoicing department (classification #26); assistant chief cost clerk (classification #31); assistant chief time-keepers (classification #41); supervisory statistical clerk (classification #46); head clerks in the following departments: brick mason department (classification #89); electrical department (classification #72); warehouse Form. & shipping department (classification #89).

ments, at no time do they have employees under their supervision. We shall, therefore, include them.

Employees alleged to have confidential status

Compensation clerk (classification #48): The record reveals that he handles all compensation claims made by the Company's workmen.¹⁰ In the course of his work, he has access to information relating to the history of the injuries of employees seeking compensation. In many instances, he is required to assist the Company's attorney in the preparation of compensation cases and to testify concerning disputed claims. Since it also appears that the claims of injured workmen are, at times, the source of grievances presented by the Union to the Company, this employee has access to confidential information concerning the Company's labor relations. We shall, therefore, exclude him.

Employment clerks (classification #57): The employment clerks work in the Company's personnel department and are under the supervision of the head of that department. In the course of their work, they have access to the employment history of all the workers in the plant and also to records containing confidential information concerning the Company's labor relations. We shall exclude them.¹¹

Clerk-stenographer in the employment office (classification #58): This employee is substantially in the same position as the employment clerks, above described, with reference to having access to confidential information concerning the Company's labor relations. We shall, therefore, exclude her.

Telephone and teletype operators (classifications #11 and #12): These employees are engaged in sending and receiving messages through interplant communication systems. The Company contends that, in the course of their work, these employees may come into possession of confidential information and should be excluded from the unit.

The testimony shows that it is against the Company's rules for the telephone operators to listen in on telephonic conversations in the plant. Since access to confidential information can be had by these employees only through willful breach of the Company's rules, it is our opinion that the remedy for such breach of duty lies in the Company's power to discharge or discipline its employees and not in the denial of their right to collective bargaining. We shall include the telephone operators.

¹⁰ The Company, pursuant to the workmen's compensation laws of the State of Ohio, is a self-insurer and is required to adjust compensation claims directly with the injured employees.

¹¹ See *Matter of Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

With respect to the teletype operator, it is apparent that this employee does not bear a confidential relationship to management and that her duties are clerical in nature. We shall include her.

Employees who have no community of interest with the clerical workers

Nurses (classification #49): These employees are graduate nurses and perform the usual functions associated with their classification. They are professional employees under the direct supervision of the Company's physician. One of them spends a majority of her time away from the plant and performs the duties of a social worker as well as those of a visiting nurse, making direct reports to management on her findings as to employees on sick leave. While we do not agree with the Company's contention that these employees are confidential workers within the meaning of our usual definition, we are of the opinion that, because of the professional nature of their work, they should be excluded.¹²

Assistant director of welfare and safety (classification #65): This employee works under the direction of the welfare and safety director, and his duties are to conduct safety meetings and enforce safety rules. All of his time is spent among the Company's production and maintenance employees. In view of the foregoing, we find that he has no community of interest with the clerical employees and we shall exclude him.

Welfare and safety clerk and stenographer (classification #66): This employee performs the usual duties associated with her classification and is clearly an ordinary stenographer and clerk. We shall, therefore, include her.

Assistant steam engineers (classification #6): These employees are highly trained technical individuals whose duties are to make regular tests of boiler pumps and mechanical equipment throughout the plant. In the course of their work, they make reports of defective equipment directly to the chief engineer. We shall, therefore, exclude the assistant steam engineers as technical employees.

We find that all office and clerical employees engaged at the Company's Portsmouth Works, including the employees listed in Appendix A, annexed hereto, but excluding executives, professional, technical, and plant protection employees, employees listed in Appendix B, annexed hereto, 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.

¹² See *Matter of American Steel and Wire Company*, 58 N. L. R. B., 253.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units 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.

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 Relation 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 Wheeling Steel Corporation, Portsmouth, Ohio, 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 Ninth 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 units 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 elections, to determine whether or not they desire to be represented by the United Steelworkers of America, C. I. O., for the purposes of collective bargaining:

APPENDIX A

Assistant manager of the order and stock department (classification #22).

Assistant manager in the invoicing department (classification #26).

Assistant chief cost clerk (classification #31).

Assistant chief timekeepers (classification #41).

Supervisory statistical clerk (classification #46).

Head clerk in the brick mason department (classification #89).

Head clerk in the electrical department (classification #72).

Head clerk in the warehouse Form. & shipping department (classification #89).

Welfare and safety clerk and stenographer (classification #66).

Telephone and teletype operators (classifications #11 and #12).

APPENDIX B

Cashier's clerk (classification #2).

Janitor supply man (classification #14).

Clerk traffic department (classification #17).

Head clerk in general yard switching department (classification #67).

Head clerk in coke plant department (classification #73).

Head clerk in blast furnace department (classification #80).

Head clerk in open hearth furnace department (classification #82).

Head clerk in blooming mill and billet yard department (classification #88).

Head clerk in machine shop department (classification #91).

Head clerk in range boiler and barrel shop department (classification #94).

Head clerk in range boiler and boiler shop sales department (classification #104).

Head clerk in rod and wire department (classification #115).

Head clerk in army ordnance department (classification #117).

Nurses (classification #49).

Employment clerks (classification #57).

Clerk-stenographer in the employment office (classification #58).

Metallurgical laboratory head observer and observers (classifications #84 and #85).

Assistant director of welfare and safety (classification #65).

Assistant steam engineers (classification #6).

Compensation clerk (classification #48).