

In the Matter of HI-ALLOY CASTINGS COMPANY and UNITED STEEL-
WORKERS OF AMERICA, C. I. O.

Case No. 6-R-1066.—Decided February 7, 1945

Messrs. R. Charles Stiefel, Jr., and H. Davis, of Ellwood City, Pa., for the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., and Mr. Ben Phillips, of Ellwood City, Pa., for the Union.

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Hi-Alloy Castings Company, Ellwood City, 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 Ellwood City, Pennsylvania, on December 15, 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 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

Hi-Alloy Castings Company is engaged in the manufacture of steel castings in its plant at Ellwood City, Pennsylvania. During the 3 months preceding the hearing, the sale of steel castings amounted to over \$66,000, over 75 percent of which was shipped to points outside the

Commonwealth of Pennsylvania. During the same 3-month period, the Company purchased raw materials valued in excess of \$20,000, approximately 75 percent of which was received from points outside the Commonwealth of Pennsylvania. The Company was located from August 1941 to September 1944 at New Brighton, Pennsylvania, and moved to its present location in September 1944.

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

III. THE QUESTION CONCERNING REPRESENTATION

About November 1, 1944, the Union advised the Company by letter that it represented a majority of its employees, and requested a meeting. The Company, however, has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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

The Union petitioned for a unit of all production and maintenance workers, including watchmen and laboratory technicians,² but excluding clerical employees and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action. The

¹ The Field Examiner reported that the Union submitted 24 authorization cards, all of which bore the names of persons listed on the Company's pay roll, which contained the names of 35 employees in the appropriate unit; and that 13 cards were dated September 1944, 8 were dated October 1944, and 3 cards were undated.

The Company stated that it did not consider that the request by the Union emanated from its employees, but that it deems the Union to be a third party to the proceedings. It contended that since none of the employees in the Company had appeared before it for the purpose of requesting collective bargaining, the Union could not be considered to represent its employees. These contentions are without merit. The question of whether or not the employees of the Company desire to be represented by the Union will be decided by the votes of the employees themselves in the election held by the Board. The Union has evidenced its interest in the proceedings by means of the authorization cards, apparently signed by the employees of the Company, and submitted by the Union to the Board.

² The Union amended its petition at the hearing to include the laboratory technicians inasmuch as it appears that these employees perform routine analyses

Company contended that the unit should include all employees of the Company, including foremen and clerical employees.

The Company employs one regular and one part-time employee engaged in clerical work in its office. These employees perform the usual duties incident to their position. The Board has repeatedly stated that, inasmuch as the interests and working conditions of office clerical employees are so dissimilar from those of production and maintenance workers, they shall not, as a general rule, be included in a unit of production and maintenance employees.³ In accordance with this policy, we shall exclude the clerical workers from the unit. The foremen, and melter, who are supervisory employees, shall be excluded in accordance with our customary practice.

We find that all production and maintenance employees, including watchmen and laboratory technicians, but excluding foremen, the melter, 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

The Company stated at the hearing that since it moved to its present location on September 12, 1944, the number of its employees has been steadily decreasing, due to the great turn-over in its employment. It stated that the War Manpower Commission has set the quota of its employees at 55, but that it has only approximately 35 employees at the present time, and this number is constantly fluctuating. A request has been made by the Company of the War Manpower Commission to be permitted to hire a total of 85 workers as its full complement of employees, but it does not know when, or if, its quota will be increased. The Company argues that since it is now producing at approximately one-third its full capacity no election should be held until full capacity is reached. We find no merit in this contention.

We have often held that, where an employer has in his employ 50 percent of the expected full complement of employees, we will not deny these employees the present opportunity to bargain collectively.⁴ There is now in the employ of the Company over 50 percent of the number of employees allowed to it by the present War Manpower Commission decision, and the probability of a substantial increase in the

³ See *Matter of Atlantic Basin Iron Works*, 5 N. L. R. B. 402; p. 184 of Third Annual Report; *Matter of Indianapolis Power and Light Company*, 51 N. L. R. B. 670.

⁴ See *Matter of Pullman Standard Car Manufacturing Co.*, 49 N. L. R. B. 542; *Matter of Hicks Hayward Mfg. Co.*, 58 N. L. R. B. 1557.

near future is very slight. We therefore see no reason to postpone a determination of representatives.

The Company requests advice as to whether it can discuss the question of unionism with its employees without fear of having the Union file an unfair labor practice charge against it, and states that it should be permitted to obtain cards from its employees indicating that they do not desire to be represented by a union. We cannot, of course, preclude the Union from filing charges of unfair labor practices, but if the Company's request is construed as seeking a determination of a declaratory nature as to what conduct would be regarded as violative of the Act, it is sufficient to say that we do not deem it appropriate to prejudge such questions, or instruct an employer at this stage of a representation proceeding as to what it can or cannot do without fear of its conduct being deemed an unfair labor practice or interference with the conduct of an election. We are constrained to observe, however, that the election which we are directing will determine whether or not the employees desire representation by the Union, and that polling or questioning employees regarding their union affiliation or soliciting them to repudiate a union have been found, in certain circumstances, to be violative of the Act.⁵

The Company contends that it employs some part-time high school students and certain adult employees who do not work with sufficient regularity to entitle them to vote. It proposes, because there is so much irregularity, that only those employees who have worked at least 30 hours per week since the inception of their employment with the Company, or in the 4 weeks preceding the election, whichever is the lesser, should be entitled to vote.⁶ The Union has agreed to the use of this yardstick for determining the employees eligible to vote in the election.

As to the high school students, it appears that there are 10 or 12 who work for the Company part time, but do not work on a regular schedule. The Company's witness testified that these employees themselves determine the number of hours per week they desire to work, and "come and go as they please." The majority of the high school students work less than, and a few work more than, 15 hours per week. The record does not indicate whether or not these employees receive the same rates of pay as the regular employees, or whether or not they are entitled to the same benefits. In our opinion those high

⁵ *Shell Oil Company v. N. L. R. B.*, 128 F. (2d) 206 (C. C. A. 5), enf'g *Matter of Shell Oil Company, Inc.*, 34 N. L. R. B. 866; *N. L. R. B. v. Alco Feed Mills*, 133 F. (2d) 419 (C. C. A. 5), enf'g as mod. 41 N. L. R. B. 1278; *N. L. R. B. v. New Era Die Co., Inc.*, 118 F. (2d) 500 (C. C. A. 3), enf'g as mod. 19 N. L. R. B. 227.

⁶ The Company does not have a fixed policy on absenteeism and from the record it appears there is also no fixed method of identifying regular employees, from the pay roll or otherwise.

school students, or any other part-time employees, who average as much as 15 hours per week, have a sufficient interest in conditions of employment at the plant to be entitled to participate in the election. In accordance with our usual policy,⁷ we shall provide in our Direction of Election herein that "regular part-time employees" shall be eligible to vote in the election and we hereby define such an employee as one who has worked an average of 15 hours or more per week during the 4 weeks next preceding the date of the pay roll used to determine eligibility herein or since the inception of his employment, whichever period is the shorter.

It is also contended by the Company that there is a group of adult employees working for it who do not work regularly but only when they "feel like it," and are therefore temporary or irregular employees, in the sense that they come and go as they please. There is no showing, however, that these adult employees are hired on a temporary basis, but rather it is evident from the great need of the Company for additional personnel and its statement that it would hire anyone who requested employment, that all employees are hired with the expectancy of permanent employment. There appears no need therefore for a formula for defining "regular" or "permanent" employees in this case, and we shall accordingly follow our usual practice and consider eligible to vote all those full-time employees or regular part-time employees as above defined who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein.

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 election, including regular part-time employees as above defined, 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 Hi-Alloy Castings Company, Ellwood City, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty

⁷ See *Matter of Awrey Bakeries*, 44 N. L. R. B. 801; *Matter of Kaplan Brothers*, 46 N. L. R. B. 1057; *Matter of New Britain Machine Co.*, 48 N. L. R. B. 263.

(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, and the determination in Section V, above, 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 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, C. I. O., for the purposes of collective bargaining.

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