

In the Matter of COPPERWELD STEEL COMPANY and UNITED STEEL-  
WORKERS OF AMERICA, LOCAL 2243 (CIO)

*Case No. 8-C-1962.—Decided November 7, 1947*

*Mr. Louis S. Belkin*, for the Board.

*Mr. Robert G. Day*, of Warren, Ohio, *Messrs. Frank R. S. Kaplan*  
and *Maurice J. Mahoney*, of Pittsburgh, Pa., for the respondent.

DECISION

AND

ORDER

On January 14, 1946, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceedings, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent and the attorney for the Board filed exceptions to the Intermediate Report and supporting briefs. The respondent requested and was granted permission to argue orally before the Board in Washington, D. C. On October 2, 1947, the Board notified the respondent that it had rescinded its action in granting oral argument, and that, in lieu thereof any party desiring to do so would be permitted to file, within 20 days, a supplementary brief or written argument setting forth the matters which would have been covered in the oral argument. On October 9, 1947, the respondent replied, in effect, that it no longer desired to argue orally before the Board.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor

Relations Board hereby orders that the complaint herein against Copperweld Steel Company, Warren, Ohio, be, and it hereby is, dismissed.

#### INTERMEDIATE REPORT

*Mr. Louis S. Belkin*, for the Board

*Mr. Robert G. Day*, of Warren, Ohio, *Messrs. Frank R. S. Kaplan* and *Maurice J. Mahoney* of Pittsburgh, Pa., for the respondent

#### STATEMENT OF THE CASE

Upon a charge duly filed by United Steelworkers of America, Local 2243 (CIO),<sup>1</sup> herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated September 13, 1946, against Copperweld Steel Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449 herein called the Act. Copies of the complaint and notice of hearing were duly served on the respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that the respondent (1) on or about April 4, 1946, discharged or laid off Frank Guidos, Harold Hoffee, John Wiseman, John Dye, William Powell, and Farrell Woods, and failed and refused to reinstate said employees for the reason that they were members of and engaged in concerted activities on behalf of the Union; and (2) by these acts interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On or about September 24, 1946, the respondent filed an answer and later filed an amended or supplemental answer, wherein it admitted certain allegations of the complaint as to the nature and extent of its business, but denied the commission of any unfair labor practices. The respondent also filed with the Regional Director a formal motion to dismiss the complaint upon the ground that Frank Guidos, who signed the charge as President of the Union, had been removed from office prior to the filing of the charge and was not authorized to act as President or to file such charge. The motion was denied by the Regional Director.

Pursuant to notice, a hearing was held at Warren, Ohio, on October 13 and 15 and November 6 and 7, 1946, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel. Excepting the Union, all parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing the respondent moved to dismiss the complaint upon the grounds previously related herein. The motion was denied. The motion was renewed at the close of the Board's case and was again denied. At the close of the whole case, counsel for the Board moved to conform the pleadings to the proof as to formal matters such as names and dates. The motion was

<sup>1</sup>The charge was filed in the name of the Union and was signed by Frank Guidos, as President of the Union. A question of fact was raised at the hearing as to whether or not Guidos was President of the Union at the time the charge was filed. The undersigned does not believe the issue to be material. See *Consumers Power Company v N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6).

granted without objection. The respondent renewed its motion to dismiss the complaint and moved further to dismiss for lack of evidence. Ruling on the motion was reserved. The motion to dismiss is disposed of as hereinafter indicated.

Counsel for the Board and the respondent presented oral argument before the undersigned at the hearing. All parties were afforded an opportunity to file briefs or proposed findings and conclusions, or both. Counsel for the respondent has filed with the undersigned a brief and proposed findings and conclusions. The respondent's proposed findings and conclusions are hereinafter specifically ruled upon.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Copperweld Steel Company is a corporation organized under and existing by virtue of the laws of the State of Pennsylvania with its home office located at Pittsburgh, Pennsylvania. It has a plant at Warren, Ohio, where it is engaged in the manufacture of electric furnace alloy steel. The instant proceeding is concerned only with the latter plant.

During the last fiscal year, the respondent purchased raw materials, consisting principally of steel, for its Warren plant with a value exceeding \$4,000,000, approximately 75 percent of which was shipped to the plant from points outside the State of Ohio. During the same period the respondent produced electric furnace alloy steel with a value exceeding \$18,000,000, 80 percent of which was shipped to points outside the State of Ohio.

At the hearing the respondent admitted that it is engaged in commerce within the meaning of the Act.

##### II THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, Local 2243 (CIO), is a labor organization which admits to membership employees of the respondent.

##### III THE ALLEGED UNFAIR LABOR PRACTICES

###### 1. The background

From the commencement of production operations at its Warren plant, the respondent has had a collective bargaining contract with United Steelworkers of America, CIO, hereinafter called the International, or its predecessor, Steelworkers Organizing Committee. Until sometime in 1941 or 1942 the International was not sole collective bargaining agent for all of respondent's employees but merely represented its own members, and employees were not required to become or remain union members. At all times hereinafter mentioned the respondent had a contract with the International, to which Local 2243, hereinafter called the Local, was a party; among other things, the contract:

(a) Is dated May 3, 1945, and by its terms continued in effect until October 15, 1946, with provision for adjustment in the wage rate structure upon certain conditions;

(b) Covers all employees of the Warren plant of Copperweld, excluding salaried employees, foremen, assistant foremen, supervisors, watchmen, guards, draftsmen and bricklayers;

(c) Contains no-strike clauses in the following language, to-wit:

"It is the intent and purpose of the parties hereto to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto, and to provide procedure for prompt, equitable adjustment of alleged grievances to the end that there shall be no interruptions or impeding of the work, work stoppages or strikes or other interferences with production during the life of this Agreement.

"Should any difference arise between the Company and the Union or any employee of the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner;

"It is agreed by the parties hereto that the procedure provided in this Section, if followed in good faith by both parties, is adequate for fair and expeditious settlement of any grievance arising in any plant of the Company. It is further understood that an interruption or impeding of work, stoppage, or strike on the part of the Union, or a lockout on the part of the Company shall be in violation of this Agreement, and that under no circumstances shall the parties hereto discuss the grievances in question or any other grievances while the work interruption, impeding or suspension of work is in effect."

(d) Provides that the International is the exclusive collective bargaining representative for all employees of Copperweld eligible to membership therein:

(e) Provides that all eligible employees shall, during the life of the agreement, as a condition of employment, become and remain members of International in good standing in accordance with the constitution and by-laws of International, and that Copperweld shall deduct from the first pay each month the Union dues, \$1.25, of each member for the preceding month, also, initiation fees of \$3.00, and remit such dues and initiation fees to the International Secretary-Treasurer; Copperweld's Payroll Department shall furnish officials of the Local Union each month a list of the names and clock numbers of all persons on the factory payroll and a list of the clock numbers of all persons from whose pay deductions of dues and initiation fees had been made and paid over to the International and the amounts thereof.

(f) Provides for seniority of employees; in particular that employees promoted or transferred to excluded or non-Union positions shall retain the seniority held by them on the date of such promotion or transfer, but shall accumulate no additional seniority while holding such positions.

(g) Provides for adjustment of grievances in five steps, the provisions for Steps 3, 4, and 5, and for appeal being as follows, to-wit:

"Step 3: This step will be handled between members of the grievance committee and the general superintendent, or his designated representative. Matters to be discussed at these regular meetings will be the grievances on forms advanced from Step 2, or Steps 1 and 2. Subjects not disposed of in Step 3 meetings will, unless by mutual agreement otherwise, be referred to Step 4.

"Step 4: This step will be handled between the representatives of the national organization of the Union and the representatives of the executives of the Company. Witnesses may be called by either party but will not be present at discussions.

"Step 5: In the event that the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. In the absence of mutual agreement, the Director of the Conciliation Service of the United States Department of Labor shall select the umpire. The umpire shall have no authority to change any provision of this Agreement. The decision of the umpire shall be final. The expenses and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

\* \* \* \* \*

"Grievances not appealed within ten (10) days of a decision in Steps 1, 2, 3, or 4, shall be considered satisfactorily disposed of and closed.

"The grievance committee for the plant shall consist of not less than three employees of that plant, and not more than twelve (12) such employees, designated by the Union, who will be afforded such time off, without pay, as may be required

\* \* \* \* \*

"It is the purpose of this section to provide procedure for prompt, equitable adjustment of alleged grievances. It is understood and agreed that grievances to be considered must be filed promptly, and within ten (10) days after the occurrence thereof."

(h) Vests Copperweld with the exclusive management of the works, direction of the working forces, the right to hire, suspend or discharge for proper cause, or transfer, to relieve employees from duty for lack of work or other legitimate reasons, provided that such rights should not be used for purposes of discrimination against any member of the International

(1) Provides that no member of the International should be peremptorily discharged but that in all instances employees should first be suspended and during the 5 days thereafter have the right to a hearing before being discharged, and only after such hearing, or if no hearing were requested within 5 days, could the suspension be converted into discharge, and that in case of discharge, a discharged employee should have the right to allege a grievance which should be handled under the provisions of the contract

During the period commencing January 21, 1946, and ending about March 11, 1946, production operations of the respondent were at a standstill by reason of the Nation-wide steel strike. In the case of the respondent the strike was terminated by a supplemental agreement dated March 6, 1946, supplementing and amending the contract in part by extending the term thereof to continue in effect until March 6, 1947, granting a general wage increase of 18½¢ an hour, and providing as follows:

"1. It is the intent of the parties to secure and sustain maximum productivity per employee during the term of the May 3, 1945 Agreement as amended and supplemented by this Supplemental Agreement. In return to the Company for wage increase herein provided and consistent with the principle of a fair day's work for a fair day's pay, the Union reemphasizes its agreement with the objective of achieving the

highest level of employee performance and efficiency consistent with safety, good health and sustained effort, and agrees that the Union, its agents and its members will not take, authorize or condone any action which interferes with the attainment of such objective

"2. The Union agrees that during the term of the May 3, 1945 Agreement, as amended and supplemented by this Supplemental Agreement, neither the Union nor its agents, nor its members will authorize, instigate, aid, condone or engage in a work stoppage or strike. The Company agrees that during the same period there shall be no lockouts"

During the 2 weeks preceding March 23, 1946, a group of employees in the respondent's Melt Shop Department planned a "demonstration" because of some outstanding grievances in the plant and particularly in the Melt Shop. It appears that these employees were not so much dissatisfied with the handling of the grievances but because of consummated or impending lay-offs due to a recession of respondent's business. In the respondent's Melt Shop some supervisory employees, particularly employees Figley, Moran and Spulher had been demoted to the production ranks as furnace helpers. Such demotion of supervisory employees, who were excluded from membership in the Union while holding such positions, in turn necessitated the demotions or lay-offs of production employees or members of the Union. In accordance with the terms of the contract supervisory employees thus demoted automatically were supposed to have become members of the Union and the respondent was supposed to have deducted their Union dues. This the respondent had failed to do in some few cases. It appears that the grievances were called to the attention of the respondent by Frank Guidos, President of the Local, and that James C. Quinn, Director of District 26 of the International, was at the time preparing such grievances for action under the 4th step of the grievance procedure in the contract. At some time during the week preceding March 23, 1946, Guidos advised Quinn that the employees in the Melt Shop were planning to start a strike commencing on Wednesday of that week. Quinn told Guidos, in effect, that such a strike would be in violation of the contract and that it should not be permitted. He further advised Guidos that he should notify the respondent's Payroll Department of the errors in the check-off and that the grievances could be settled in accordance with the terms of the contract.

On Saturday morning, March 23, 1946, an unauthorized strike was commenced at the respondent's plant and production operations of the plant were thereby shut down until midnight of March 29, or thereabouts<sup>2</sup>. The strike was terminated upon receipt by the Local of a telegram from Quinn ordering an immediate return to work. During the strike the respondent refused to discuss grievances until the employees returned to work.

<sup>2</sup> There is some testimony in the Board's case to the effect that Quinn during the week following March 23 sanctioned or authorized continuance of the strike. It is undisputed that Quinn did not authorize the strike prior to its commencement. The undersigned believes that this question of fact is immaterial to the issues in the case, but nevertheless believes and finds that Quinn did not at any time authorize the strike. The Constitution of the International provides among other things

No strike shall be called without the approval of the International President

Other questions of fact, particularly concerning conferences between officers of the International and the Local, were litigated at the hearing. The undersigned does not believe that such questions of fact are material to the issues and therefore finds that it is unnecessary to resolve them.

## 2. The discharges

On or about April 3 or 4, 1946, John Dye, Frank Guidos, Harold Hoffee, William Powell, John Wiseman and Farrell Woods, were notified that they were suspended for violation of the contract by instigation of and participation in the strike. The respondent had determined that these six employees were instigators and leaders of the strike. There is considerable undisputed evidence in the case that justified the respondent in reaching this conclusion. On the first day of the strike one of the respondent's officers informed Guidos that the employees responsible for the strike would be discharged. Operations at the plant resumed on April 1 and Dye, Hoffee and Wiseman worked on April 2 and 3. Guidos "reported off" in order to transact business of the Union on April 1 and 2. Powell had been notified prior to the strike that his job had been discontinued and Woods had likewise been laid off. All six of the above employees requested hearings on their suspensions and such hearings were held on April 5 and 8. After the hearings, the suspensions were converted into discharges in each case. Thereafter, under the provisions of the contract, all of the six discharged men filed grievances in the 3rd step of the grievance procedure, and upon consideration thereof the discharges were sustained. The District Director of the International appealed such grievances to the 4th step of the grievance procedure, and a hearing thereon was held on April 16. The discharges were again sustained. No appeal was taken from the 4th step (the 5th step provided for arbitration) by the International.<sup>3</sup>

On or about April 18, Quinn advised the Vice-President of the Local to assume the duties of President and notified Guidos to this effect on or about April 24.

## Conclusions

Other than the discharges there are no other charges of unfair labor practices against the respondent in the case. Nor is there any history of any previous unfair labor practices or anti-Union attitude on the part of the respondent. In fact, it appears that the respondent has had excellent relations with the Union over a period of years. The respondent contends that the above-mentioned employees were discharged solely for the reason of their instigation of and participation in an unauthorized strike in violation of the no-strike clause in its contract with the Union.

Other than a suggestion in argument of collusion between representatives of the International and the respondent, there is nothing in the case that shows a motive for the discharges different from that contended by the respondent. There is no evidence whatsoever in the case tending to show collusion. In fact, it definitely appears that the representatives of the International did everything in their power to persuade the respondent to reinstate the discharged men. Certainly there is no evidence justifying the inference that the respondent discharged these 6 men in order to discourage membership in the Union.

The right of discharge for violation of contract is well established.<sup>4</sup> However, counsel for the Board claims that the respondent waived its right of discharge in the instant case by reason of the fact that the respondent permitted Guidos to report off work and permitted Dye, Hoffee and Wiseman to work for 2 days before determining to suspend them. To support his contention, counsel for the Board

<sup>3</sup> According to the contract, grievance procedure beyond step 3 is to be handled by representatives of the International. Guidos, as president of the Local, attempted to have the grievances arbitrated, but was unsuccessful in his attempts since arbitration was not requested by the International.

<sup>4</sup> *N. L. R. B. v. Sands Mfg. Company*, 306 U. S. 332, 59 S. Ct. 508.

cited the *Carey Salt Company* case<sup>5</sup> in his argument before the undersigned at the hearing. In that case the Board found as follows:

That it was clearly intended and understood by the parties participating in the settlement negotiations that all the striking employees "would be returned to work" is established by the uncontroverted testimony.

In the instant case the respondent specifically warned the President of the Local on the first day of the strike that those employees who were responsible for the strike would be discharged. Furthermore, in conformity with its contract the respondent refused to negotiate with the strikers or their leaders for a return to work and had contact only with the District Director of the International. The strikers returned to work upon being ordered to do so by the District Director. The undersigned, therefore, finds no merit in the Board's contention.

Accordingly, the undersigned finds that the respondent did not discharge the above-named employees because of their membership in or activities on behalf of the Union<sup>6</sup>

#### V. THE REMEDY

Since the undersigned has found that the respondent did not discriminatorily discharge Frank Guidos, Harold Hoffee, John Wiseman, John Dye, William Powell and Farrell Woods, it will be recommended that the complaint be dismissed.

#### CONCLUSIONS OF LAW

1. United Steelworkers of America, Local 2243 (CIO), is a labor organization within the meaning of Section 2 (5) of the Act.

2 By discharging Frank Guidos, Harold Hoffee, John Wiseman, John Dye, William Powell, and Farrell Woods, the respondent has not engaged in unfair labor practices.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law the undersigned recommends that the complaint against the respondent, Copperweld Steel Company, be dismissed.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board, may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the

<sup>5</sup> In the *Matter of The Carey Salt Company*, 70 N L R B 1099, 18 L. R. R. M 1433.

<sup>6</sup> Of respondent's proposed findings, Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, and 15 are accepted and Nos. 6 and 13 are rejected. Of the conclusions, Nos. 3, 4 and 6 are accepted and Nos. 1, 2, 5, and 7 are rejected.

party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

JOHN H. EADIE,  
*Trial Examiner.*

Dated January 14, 1946.