

In the Matter of CHAMPION SHEET METAL COMPANY, INC. and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 3-R-942.—Decided April 12, 1945

Mr. Francis X. Helgesen, for the Board.
Fraser Brothers, by *Mr. Henry S. Fraser*, of Syracuse, N. Y., for
the Company.
Mr. John Kowalski, of Syracuse, N. Y., for the C. I. O.
Mr. Donald H. Frank, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Champion Sheet Metal Company, Inc., Cortland, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. Said hearing was held at Syracuse, New York, on March 6, 1945. The Company and the C. I. O. 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. During the hearing the Company moved for the production of the C. I. O.'s authorization cards, that they might be inspected by the Company. The Trial Examiner overruled the motion. For reasons set forth in Section III, *infra*, the ruling is hereby affirmed. 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

Champion Sheet Metal Company, Inc., is incorporated under the laws of the State of New York. The Company's principal place of business is at Cortland, New York, where it operates its two plants.

The Company is engaged at these plants in the manufacture of sheet metal parts, including hoods, fenders, gasoline tanks, running boards, and cowls for heavy trucks, and heavy laundry and dry-cleaning machinery, all used principally by the Army and Navy. Additionally, the Company is engaged in assembling and painting army cabs. In peace time, the Company manufactured similar products for civilian use, as well as parts for precision machine tools, including bases, guards, chip pans, and cooling tanks. In 1944, the Company used in its manufacturing processes substantial amounts of raw materials, 40 percent of which was shipped to the Cortland plants from outside the State of New York. In the same year, in excess of 1 percent of the Company's finished products was shipped outside the State of New York.

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

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

The company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of certain of its employees until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing over the objection of the Company, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.¹

The Trial Examiner overruled the Company's motion for the submission of the authorization cards to it for inspection or, in the alternative, that the Field Examiner be present for cross-examination by the Company. The Company contends that since there was no opportunity for the Company to controvert the authenticity of the cards submitted by the C. I. O., there is no indication that a substantial number of employees of the Company desire a collective bargaining representative, and in its brief it moves that the petition therefore be dismissed. Additionally, the Company contends in its brief that the cards were not the

¹ The Field Examiner reported that the C. I. O. submitted 83 authorization cards; that the Company's pay roll contained the names of 125 employees in the appropriate unit; and that the cards were dated 1 in August; 33 in September; 6 in October; 2 in November; 3 in December 1944; 15 in January, 6 in February 1945; and 17 were undated.

At the hearing the C. I. O. submitted four additional cards dated one in December 1944; two in January; and one in February 1945

best evidence and were inadmissible hearsay the consideration of which by the Board constituted a denial of due process of law as guaranteed by the Fifth Amendment. We find no merit to these contentions and the motion is hereby denied.² The Company is not subjected to legal prejudice by the Board's consideration of these cards in satisfying its own administrative requirements.³

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 C. I. O. seeks a unit of all of the company's production and maintenance employees at the Company's Cortland, New York, plants. These two plants are operated on an integrated basis, use a single pay roll, and frequently interchange employees. The parties agree that the employees of the two plants properly compose a single unit. They also agree that the foremen and the office and clerical employees should be excluded from the production and maintenance unit sought.

The only category of employees over which there is dispute is watchmen, whom the C. I. O. would include in the unit. The Company recognizes that watchmen in comparable situations have been included by the Board in production and maintenance units, but it requests the Board's reconsideration of the situation as to these employees contending that they possess such managerial functions as to make association between them and the rest of the Company's employees inappropriate. These watchmen are neither militarized, deputized, armed, nor uniformed. They perform the typical duties of watchmen, going the rounds, punching stations, looking for fires or conditions likely to cause fires, and generally protecting the premises in the interest of the Company. Their relationship to the management of this Company is not such as would distinguish them from the Company's other employees. Considering these factors and the duties of these watchmen, we find no persuasive reason for departing from our usual policy of including this category of employees in production and maintenance units.⁴ We shall, therefore, include them in the unit hereinafter found appropriate.

We find that all of the production and maintenance employees of the Company at its plants in Cortland, New York, including watch-

² *Matter of Bakelite Corporation*, 60 N. L. R. B. 318; *Matter of H. G. Hill Stores, Inc., Warehouse*, 39 N. L. R. B. 874; *Matter of Atlas Powder Company, Zapon Division*, 43 N. L. R. B. 757; *Matter of R. H. Siskin & Sons*, 41 N. L. R. B. 187.

³ See *American Federation of Labor v. N. L. R. B.*, 308 U. S. 401.

⁴ *Matter of Union Lumber Company*, 53 N. L. R. B. 567; *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778.

men, but excluding the office and clerical employees, foremen,⁵ and 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. Testimony at the hearing revealed that among the employees of the Company there were certain part-time and temporary employees. The Company would exclude employees in both categories from the group of employees eligible to vote, whereas the C. I. O. would include them. It is clear that the part-time employees, three of whom are boys under 18 years of age, are regular production and maintenance workers. It is the practice of these employees to work more than 20 but less than 40 hours each week. They perform their duties with the full-time employees at the same usual production and maintenance jobs, receive therefor substantially the same hourly wage as the full-time employees, and work under the same working conditions. They are accorded vacation credits, as are the other production and maintenance employees. The community of interest of these employees with the other production and maintenance employees in the conditions of employment is therefore clear, and we shall not depart from our established practice of according such employees a voice in the determination of their representatives.⁶

At the time of the hearing the Company had in its employ two temporary employees. These employees were farmers who, pursuant to an agreement among themselves, the United States Employment Service, their local Draft Board, and the Company, were to terminate their employment on April 1, 1945, so as to be available for farm work. The C. I. O. seeks to include them in the voting group since these men may return to the Company at the end of the farm season. The C. I. O., however, was not able to present any evidence that these employees, or any similar temporary group, would again be employed by the Company, and their future employment remains, therefore, conjectural. Since we have before us insufficient evidence of an expectancy of permanent employment of these men, and since their interest in conditions of employment cannot approximate that of the other

⁵ The Company sought the exclusion of assistant foremen. It was established at the hearing, however, that at the present time there are no assistant foremen in the employ of the Company.

⁶ *Matter of T. C. Esser Company*, 60 N. L. R. B. 105.

employees in the appropriate unit, we shall direct their exclusion from the group of voting employees.⁷ We shall direct that the employees of the Company eligible to vote in the election shall be, with the exception of the temporary employees, those 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 Champion Sheet Metal Company, Inc., Cortland, New York, 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 Third 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 temporary employees and 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.

⁷ *Matter of Register and Tribune Company*, 60 N. L. R. B. 360