

In the Matter of PULLMAN-STANDARD CAR MANUFACTURING COMPANY
and UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 6-R-1133.—Decided September 10, 1945

Winston, Strawn & Shaw, by Mr. Neal J. McAuliffe, of Chicago, Ill.,
and Mr. Harry M. Hays, of Butler, Pa., for the Company.

Mr. John J. Brownlee, of Pittsburgh, Pa., Mr. S. Harold Grossman,
of Tarentum, Pa., and Mr. Eugene Markwell, of Butler, Pa., for the
CIO.

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 CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Pullman-Standard Car Manufacturing Company, Butler, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. The hearing was held at Butler, Pennsylvania, on June 1, 1945. The Company and the CIO 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.

At the hearing, the Company moved the dismissal of the petition. Ruling on the motion was reserved for the Board. For the reasons stated in Section IV, *infra*, the motion is hereby denied. 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

Pullman-Standard Car Manufacturing Company is a Delaware corporation, engaged in the manufacture of railway freight cars and the
63 N. L. R. B., No 126.

appurtenances thereto, in the manufacture of shells for the United States Army, and in commercial forge work. The Company operates plants in Illinois, Massachusetts, Alabama, Louisiana, Texas, Indiana, and Pennsylvania. The plant at Butler, Pennsylvania, the sole operation of the Company involved in this proceeding, purchases annually outside the Commonwealth of Pennsylvania supplies valued in excess of \$1,000,000. During 1944, the Company shipped from the Butler plant to points outside the Commonwealth of Pennsylvania finished products valued in excess of \$1,000,000. The Butler plant was engaged, at the time of the hearing, entirely in war production.

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 CIO as the exclusive bargaining representative of the Company's plant-protection employees upon the grounds discussed in Section IV, *infra*.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO 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 CIO seeks a unit of the plant-protection employees of the Company at the Butler plant, including those employees designated on the pay rolls as corporals, sergeants, and lieutenants, but excluding supervisory employees within our usual definition. The Company takes no stand as to the propriety of the inclusions and exclusions sought, but contends that any unit of plant-protection personnel is inappropriate on the ground that their loyal performance as representatives of management would be impaired by membership in the CIO inasmuch as the CIO presently represents the Company's production and maintenance employees. The Company asserts that the CIO cannot therefore properly represent employees whose duties

¹The Field Examiner reported that the CIO submitted 18 application-for-membership cards, and that there were 26 employees in the unit sought. The cards were dated 13 in November and 2 in December 1944, and 3 in February 1945.

involve the exercise of authority over the Company's other employees, especially in light of the "obligation" which employees joining the CIO are required to assume. Additionally, the Company argues that these employees perform certain activities of a confidential nature, and for that reason do not constitute an appropriate unit.

The guards involved herein perform the tasks usually associated with their position: they check all persons entering or leaving the plant area; they patrol the company property for fires and fire hazards, and extinguish minor blazes; and they halt disorders occurring on the property. Thus, in general, it is their duty to protect the Company's property by safety precaution and maintenance of discipline. In performing these functions, they may deny entrance to any person whom they deem dangerous, or evict him; they have authority, as well, to arrest any person engaging in altercations on plant property, and take him into custody. Although they have never exercised that authority, they have surrendered offenders to the police authorities at the Company's gates. Of the 26 guards, 19 are deputized. The remainder have not been deputized because they were not in the Company's employ at the time, in 1942, of the deputization; and when they were hired, all of the guards were militarized, which the Company considered made deputization superfluous. Although the guards were subsequently demilitarized, the more recently hired ones have still not been deputized.² The Company's guard chief admitted that deputization alters neither the duties nor the powers of the guards, but has merely "psychological" value. All but 4 of the 26 guards are armed; all wear badges. From time to time, the guards have been called upon to conduct investigations for the Federal Bureau of Investigation, or for the Company concerning thefts.

We have had frequent occasion in previous, similar, cases to consider the position of similar plant-protection personnel as the alleged representatives of management.³ While it was true in those cases, as here, that the plant guards had a duty to protect the plant and its personnel from both employees and others who were drunk, disorderly, or otherwise dangerous, we have consistently held that such duty creates merely a monitorial relationship between guards and other employees, and does not affect the statutory right of the guards, as employees, to bargain collectively.⁴ We have, moreover, repeatedly held

² The Company's guard chief testified that he would like to see his newer men deputized, but that this step would probably not be taken since the more recent additions to the guard force, those who have not been deputized, will be the first to be laid off when a contemplated reduction in plant activities ensues.

³ See *Matter of Bethlehem-Fairfield Shipyard, Inc.*, 61 N. L. R. B. 901; *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892, and the cases cited therein.

⁴ The Company attributes recent unrest among its guards to their organizational activities. The Act, of course, prescribes collective bargaining as a remedy for industrial unrest, and the Company may, as always, utilize its power of discipline and discharge to correct neglect of duty. See *Matter of Chrysler Corporation*, 44 N. L. R. B. 881. We note,

that a union which represents other employees of a company may likewise represent that company's plant-protection personnel.⁵ It is the Company's assertion that sundry provisions of the CIO's constitution and "obligation" make CIO membership and competent performance of guard duties incompatible. We have examined those provisions and perceive nothing which would necessarily preclude the plant-protection employees from performing their duties conscientiously. Moreover, the investigatory work of the guards, while clearly secret, does not make them "confidential employees" within our customary definition since these investigations are not the result of and do not result in the formulation or administration of company labor relations policy.

A representative of the CIO stated that it is the CIO's intention to establish a separate unit of guard employees, and thereby, through that unit's bargaining committees, to negotiate with the Company and present grievances to it separately.⁶ We take this opportunity to repeat that we contemplate that this separation of the bargaining units in their negotiations with the Company and their day-to-day activities will be one of fact, not merely form, and shall be reflected in all bargaining between the Company and any duly designated bargaining representative as well as in negotiations for a separate contract for the plant-protection employees.⁷

As previously stated, the Company takes no stand on inclusions in and exclusions from the unit. The CIO would exclude the chief of police, but would include the so-called corporals, sergeants, and lieutenants. The chief is in charge of the entire guard force, and does all hiring and discharging of the personnel under him. His supervisory authority is therefore clear, and we shall exclude him from the unit hereinafter deemed appropriate. The record likewise makes it clear that the two employees listed on the pay rolls as corporals possess no supervisory authority, and they shall therefore be included in the unit hereinafter deemed appropriate.

The two employees whom the pay roll lists as sergeants perform the normal guard functions; in addition, they recommend hire and discipline. The chief testified, however, that any guard may recommend hire, and that whether or not such recommendation is accepted depends upon the personality of the recommending person and not upon his rank. The chief testified, moreover, that when a sergeant recommends discipline, the case is invariably investigated before any action is taken. From these facts it is clear that the sergeants do not

moreover, that the chief testified that reprimands had resulted in improved performance, and that the guard force had proved more competent since their grievances with respect to back pay and vacations were remedied.

⁵ See *Matter of National Lead Company, Titanium Division*, 62 N. L. R. B. 107, and cases cited therein

⁶ The guards are not now members of Local 1415 of the CIO which represents the production and maintenance employees, but of the international organization.

⁷ *Matter of Standard Steel Spring Company*, 62 N. L. R. B. 660.

exercise supervisory authority within our usual definition and we shall include them in the unit hereinafter deemed appropriate.

The Company employs four so-called lieutenants. One of these men⁸ was in charge of rationing and transportation at the time of the hearing. He performs no supervisory functions in that position and therefore we shall include him in the bargaining unit. The other employees in this category are in charge of the three guard shifts. Their authority includes the rearrangement of work details in the absence of one of the men and they may assign special tasks to their men. They check the performance of their guards and report their findings to the chief, who relies on those reports in making promotions. They remove guards from their jobs for derelictions and recommend discharge therefor to the chief, who has in the past discharged two men upon a lieutenant's recommendation. They discipline their guards for misconduct, and the chief has always upheld their decisions in such cases. They may grant their men time off. They perform no guard duties themselves. It is clear from these facts that the three lieutenants are supervisory employees within our usual definition, and they are excluded, as such, from the unit determination made hereinafter.

We find that all plant-protection employees of the Company at the Butler plant, including the corporals, sergeants, and the transportation lieutenant, but excluding the chief and all 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 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.

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

⁸ Milford V. Myers.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pullman-Standard Car Manufacturing Company, Butler, Pennsylvania, 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 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, 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, C. I. O., for the purposes of collective bargaining.

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