

In the Matter of ELECTRIC STEEL FOUNDRY *and* METAL TRADES
COUNCIL OF PORTLAND AND VICINITY, AFL

Case No. 19-R-1567.—Decided October 16, 1945

Mr. Robert L. Sabin, of Portland, Oreg., for the Company.

Mr. James Landye, of Portland, Oreg., for the AFL.

Mr. J. L. Menzie, of Portland, Oreg., for the CIO.

Mr. Nathan Saks, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Metal Trades Council of Portland and Vicinity, AFL, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Electric Steel Foundry, Portland, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Portland, Oregon, on May 31, 1945. The Company, the AFL, and United Steelworkers of America, CIO, herein called the CIO,¹ 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 Trial Examiner refused to admit in evidence a contract between the Company and the AFL which the Company urged as a bar to the proceeding. The Company also moved to dismiss the petition on the basis of this contract. For the reasons stated in Section III, *infra*, the Trial Examiner's ruling with respect to the admission in evidence of the contract is overruled, but the Company's motion to dismiss the petition is denied. Except as noted above, the Trial Examiner's rulings made at the hearing are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

¹ The CIO has submitted a waiver of its charges of unfair labor practices filed against the Company in Case No. 19-C-1399, insofar as they might constitute a basis for objecting to the instant proceeding.

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Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Electric Steel Foundry, an Oregon corporation, is engaged in the manufacture of steel castings, and in the retail sale of wire rope and rolling steel stock. The Company annually uses in its manufacturing process materials obtained outside the State of Oregon valued at about \$2,500,000.

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

II. THE ORGANIZATIONS INVOLVED

Metal Trades Council of Portland and Vicinity, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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 AFL as the exclusive bargaining representative of certain of its employees on the ground that it has not been legally established that the AFL represents a majority of such employees.

At the hearing the Company offered in evidence a contract between it and the AFL² for the purpose of establishing that the contract was a bar to this proceeding, and also moved to dismiss the petition on the ground that the contract precluded a present determination of representatives. The Trial Examiner refused to admit the contract in evidence on the ground that it was incompetent and immaterial, allowing it, however, to be marked as a rejected exhibit, and reserved ruling on the motion to dismiss for the Board. Inasmuch as a contractual bar issue is germane to a determination of whether a question concerning representation has arisen, we shall admit the contract in evidence.

The contract, which was executed on September 2, 1941, provides, *inter alia*, that, "The Union [the AFL] will not request that it act as bargaining agent for any of its members unless its membership includes a majority of the Company's employees, . . ." The Company contends that the quoted clause, in the absence of proof by the

² International Molders and Foundry Workers Union of North America, which is not a party to this proceeding, was also a signatory to the contract.

AFL that its membership includes a majority of the Company's employees, not only precludes it from requesting recognition as bargaining representative from the Company, but also estops it from petitioning the Board in an attempt to gain recognition. We do not agree. We construe the clause in question merely to impose a condition on any request by the AFL for recognition as bargaining agent on a "members-only" basis. It does not restrict, either expressly or impliedly, the right of the AFL to petition the Board, as here, for recognition as the statutory bargaining representative for all the employees in an appropriate unit. Accordingly, since the clause is not relevant, the contract cannot operate to preclude a present determination of representatives. We need not pass upon the question of the legal effect of the quoted provision were it given the broad construction sought by the Company.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of the employees in the unit hereinafter found appropriate.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

We find, in accordance with a stipulation of the parties, that all production and maintenance employees of the Company, excluding office workers, office janitors, draftsmen, engineers, pattern workers, guards, watchmen, 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.

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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

³ The Field Examiner reported that the AFL submitted 149 authorization cards; that 93 were dated between March and May 1945, and 56 were undated; and that there were 313 employees in the alleged appropriate unit.

The CIO submitted 31 authorization cards, dated May 1945, to the Trial Examiner at the hearing. Pursuant to a stipulation of all parties, the Trial Examiner subsequently checked these cards against the Company's pay roll for the period ending May 31, 1945, and reported that the names of all 31 persons appearing on the cards were listed on that pay roll.

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 Electric Steel Foundry, Portland, Oregon, 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 Nineteenth 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 those employees 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 they desire to be represented by Metal Trades Council of Portland and Vicinity, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither.