

In the Matter of ALLEGHENY LUDLUM STEEL CORPORATION and UNITED
STEELWORKERS OF AMERICA, CIO

Case No. 6-R-1180.—Decided December 10, 1945

Messrs. Ralph C. Edgar and C. Harold Skodol, of Brackenridge, Pa., for the Company.

Mr. John J. Brownlee, of Pittsburgh, Pa., and Mr. Paul J. Fasser, of Vandergrift, 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, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Allegheny Ludlum Steel Corporation, West Leechburg, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph Lepie, Trial Examiner. The hearing was held at Pittsburgh, Pennsylvania, on July 17, 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 and in its brief, the Company moved the dismissal of the petition. 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

Allegheny Ludlum Steel Corporation is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

64 N. L. R. B., No. 212.

It is engaged in the manufacture and distribution of various types of steel products at its five plants in the States of New York and Pennsylvania, one of which is the West Leechburg, Pennsylvania, plant, the sole operation of the Company involved in this proceeding. During the year 1944, the Company purchased raw materials consisting principally of pig iron, scrap iron, iron ore, ferro-silicon, and manganese ore, valued at approximately \$25,000,000, of which in excess of 40 percent was shipped to the Pennsylvania plants from points outside the Commonwealth of Pennsylvania. During that year, the Pennsylvania plants produced finished products valued in excess of \$60,000,000, of which more than 70 percent was shipped to points outside the Commonwealth of Pennsylvania.

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 until the CIO 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 CIO represents a substantial number of employees in the unit sought.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 all the Company's plant-protection employees at its West Leechburg plant, including the lieutenants, but excluding the captain of the guards. The plant-protection force consists of a captain, otherwise known as the chief of the guards, three lieutenants, otherwise known as patrolmen, and approximately 19 guards who are divided into four categories, i. e., clock house men, clock route men, stationary box men, and an extra relief guard.

¹The Field Examiner reported that the CIO submitted 17 authorization cards; that there were 22 employees in the unit sought; and that the cards were dated in April 1945.

These guards are frequently changed from one category to another and, in general, their duty consists of protecting the plant property, property of the United States located on the plant property, and the Company's employees.

The clock housemen are stationed at the Company's entrance, where they take messages from men reporting to and from work, check the badges of employees, sign in and out all trucks, interrogate all visitors, guard against fire, and watch for violations of the company rules. The clock route men walk designated tours, carrying the watchmen's clock, guarding against fire, and watching for violations of the company rules. The stationary box men are stationed at fixed points along the unfenced portions of the plant, where they watch for fire and prevent the entrance of trespassers. The extra relief guard substitutes for absent guards at the stationary boxes.

All of the plant-protection personnel were deputized prior to their militarization in 1943. Eleven of 23 members of the plant-protection force, however, were hired thereafter, and were not deputized following demilitarization. All but 3 or 4 of the plant-protection force are armed. It appears that the Company makes no distinction between deputized and nondeputized guards in the assignment to duty, and it is clear that the arming of a guard does not depend upon his deputization.

The Company contends that the petition should be dismissed on the grounds, *inter alia*, that guards do not constitute an appropriate unit because (1) they are not employees within the meaning of the Act, (2) they are direct representatives of the company management, and (3) unionization of deputized guards would create an untoward division of allegiance.² We have considered each of these assertions in many recent cases involving employees with similar duties, and have found them to be without merit.³ The Company argues, further, that the CIO may not represent these employees because it presently represents the Company's production and maintenance employees. A designated bargaining representative, we have consistently held,⁴ may represent both plant-protection employees and other employees of a company so long as it meets our requirement by representing the plant-protection employees as a separate unit for the purposes of collective bargaining and in its day-to-day

² In its brief, the Company cites the decision of the United States Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 146 F (2d) 718. We do not acquiesce in the doctrine enunciated in that decision, which has not yet been passed upon by the Court of last resort (Certiorari was granted and the case remanded for further consideration on June 4, 1945, 65 S. Ct 1413)

³ *Matter of Sealed Power Corporations*, 61 N. L. R. B. 1639; *Matter of Standard Steel Spring Company*, 62 N. L. R. B. 660; *Matter of Aluminum Company of America*, 63 N. L. R. B. 828; *Matter of Muskegon Piston Ring Company*, 63 N. L. R. B. 885.

⁴ See *Matter of Standard Steel Spring Company (supra)*, *Matter of Pullman-Standard Car Manufacturing Company*, 63 N. L. R. B. 822; *Matter of Bethlehem Supply Company*, 63 N. L. R. B. 937.

activities.⁵ Finally the Company contends that its contract with the CIO specifically precludes the CIO from seeking to represent these employees. The contract states:

It is understood and agreed that this Agreement pertains to employees of the Company's steel manufacturing plants . . .

The term "employee," as used in this Agreement, applies to all employees of the Company employed in and about the Company's steel manufacturing plants, excluding salaried employees, foremen, assistant foremen, supervisors in charge of any classes of labor, watchmen, guards, and confidential clerical employees regardless of method of compensation . . . for whom the [CIO] is, or may be, during the life of this Agreement, certified by the National Labor Relations Board as the exclusive collective bargaining representative . . .

Thus, the contract sets out the scope of the unit covered and excludes by its terms the employees involved herein. Neither in its terms nor in the surrounding circumstances, however, are there factors to show that the CIO committed itself not to seek to admit or represent other employees than those covered by the contract in other units, or not to sign an exclusive collective bargaining contract covering them.⁶

We have considered each of the Company's contentions upon which it bases its motion to dismiss, and we find them to be without merit. We have therefore denied the motion to dismiss the petition.

The parties agree that the captain of the guards is a supervisory employee within our usual definition and should be excluded from the unit. The Company would also exclude the lieutenants as supervisory employees. Each of the lieutenants is at various times in charge of a shift of guards. He does not perform the same duties as the guards except to relieve a guard when he wishes, but he patrols the plant, roaming at will and observing the performances of the guards. He does not assign guards to their posts, but may rearrange their positions. He has authority to send home a guard for intoxication or malperformance of his duties. The lieutenants are salaried, whereas the guards are hourly paid. The lieutenants receive approximately a 13-percent higher wage than the guards. We are of the opinion that the lieutenants are supervisory employees within our usual definition, and we shall exclude them from the unit hereinafter found appropriate.

We find that all the Company's plant-protection employees at its West Leechburg plant, excluding the captain, lieutenants, and any

⁵ We note, moreover, that at the hearing a CIO representative testified that it is the CIO's intention to establish a separate local for the purpose of representing the employees involved herein.

⁶ See *Matter of Consolidation Coal Company*, 63 N. L. R. B. 169; cf. *Matter of Briggs Indiana Corporation*, 63 N. L. R. B. 1270.

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 purpose 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Allegheny Ludlum Steel Corporation, West Leechburg, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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, CIO, for the purposes of collective bargaining.