

In the Matter of ALLIED STEEL CASTINGS COMPANY *and* FOREMEN'S
ASSOCIATION OF AMERICA AND ALLIED STEEL CHAPTER No. 96, FAA,
INDEPENDENT

Case No. 13-R-3070.—Decided March 21, 1946

Mr. H. E. Seyfarth, of Chicago, Ill., for the Company.
Messrs. Bernard E. Konopka and William Vallance, of Detroit,
Mich., for the Union.

Mr. S. E. Perish, of Harvey, Ill., for the CIO.

Mr. Seymour Cohen, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Foremen's Association of America and Allied Steel Chapter No. 96, FAA, Independent, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Allied Steel Castings Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman J. De Koven, Trial Examiner. The hearing was held at Chicago, Illinois, on various days between August 9 and 18, 1945. The Company, the Union, and the 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 Company moved to dismiss the petition on the ground that the Board is without legal authority to establish a unit of supervisory employees. The Trial Examiner referred this motion to the Board. For reasons stated hereinafter, 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 opportunity to file briefs with the Board.

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

¹ At the hearing, the CIO's motion to intervene solely to protect its interest in the production and maintenance unit represented by it was granted.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Allied Steel Castings Company, an Illinois corporation with principal offices in Chicago, Illinois, operates a plant in Harvey, Illinois, where it is engaged in the manufacture of steel castings. In the operation of this plant, the Company during the past year purchased raw materials valued in excess of \$500,000, of which approximately 75 percent was shipped from points outside the State of Illinois. During the same period, the Company produced goods valued in excess of \$2,000,000, of which more than 75 percent was shipped to points outside the State of Illinois.

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

II. THE ORGANIZATION INVOLVED

Foremen's Association of America and Allied Steel Chapter No. 96, FAA, Independent, is an unaffiliated labor organization, admitting to membership supervisory employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its supervisory employees on the ground that the legal rights of supervisory employees to bargain collectively under the Act have not been judicially determined.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 Union's petition, as amended at the hearing, seeks a unit including superintendents, assistant superintendents,³ job foremen, and

² The Field Examiner reported that the Union submitted 20 membership applications. There are approximately 22 employees in the unit petitioned for.

³ The record discloses that the Company began to apply the designations "superintendent" and "assistant superintendent" 2 or 3 weeks before the hearing, and that the employees so designated were theretofore known as "lead foremen" or "general foremen". Their change in title was not accompanied by any changes in their functions or authority.

The plant superintendent, Mr. Wilfred Harrison, who was formerly the foundry superintendent and who has continued to act in that capacity, is not sought to be included by the Union.

the assistant foreman,⁴ employed in the Company's four production departments. The Company makes no contention as to the composition of the unit, but takes the position that the Board does not have the legal capacity to find a unit of supervisory employees to be appropriate.

In *L. A. Young Spring & Wire Corporation*,⁵ we said:

The Board has, in the *Maryland Drydock* and following cases, construed Section 9 (b) as conferring upon it administrative discretion, not only to determine which of several units is appropriate "in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act," but also to decide that some "employees" may not constitute an appropriate unit in any circumstance. We are now persuaded that this interpretation is unjustified and should not govern future Board rulings.

Congress has specifically listed for exclusion from the operation of the Act only three classes of workers: agricultural, domestic and family. It is urged, however, that under the authority to define the appropriate unit contained in Section 9 (b), the Board has, in effect, the power to add to this list of Congressional exclusions. Section 9 (b) does not, in our opinion, lend itself to such an interpretation. The language of this section is language not of exclusion but of classification. We are to choose between alternatives: whether the appropriate unit for collective bargaining purposes shall be the "employer unit, craft unit, plant unit or subdivision thereof." The function of deciding the appropriate unit is a positive one. "It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group of employees in all circumstances." Once the Board determines that certain individuals are "employees" within the meaning of the Act, its sole remaining duty under Section 9 (b) is to group these "employees" in that unit which will insure to them "the full benefit of their right to self-organization and to collective bargaining," and otherwise effectuate the policies of the Act. Under the power to define the unit, the Board may properly insist that foremen be organized in bargaining units apart from their subordinates, but it cannot ostracize them. In this view, the kind of industry in which foremen are employed is immaterial and the duties and responsibilities of foremen are relevant only insofar as they bear on the question of

⁴The Company employs one assistant foreman. He is salaried, as are the other supervisory employees herein sought to be included, performs functions similar to those of a job foreman, and enjoys the same privileges as those accorded to the other supervisory employees.

⁵65 N. L. R. B. 298

proper grouping for collective bargaining purposes. These factors may become important in fixing the terms of any ultimate bargain, but they cannot be a criterion in determining whether this Board's facilities should be made available to foremen.

Thus we held there, as we do here, that the Act not only authorizes but requires the Board to group all individuals, once they are found to be "employees" within the meaning of the Act, into some unit deemed appropriate for collective bargaining purposes. We there also reaffirmed our finding that foremen are employees within the meaning of the Act.

As in previous cases, we find that the Union is an independent, unaffiliated labor organization, organized for the exclusive purpose of representing supervisory employees.⁶

We find, therefore, that all superintendents,⁷ assistant superintendents, job foremen, and the assistant foreman, employed by the Company in its four production departments, 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 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 Allied Steel Castings Company, Chicago, Illinois, 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 Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and

⁶ *Matter of L. A. Young Spring & Wire Corporation, supra; Matter of Packard Motor Car Company*, 61 N. L. R. B. 4 and 64 N. L. R. B. 1212

⁷ Excepting Mr. Wilfred Harrison. see footnote 3. *supra*.

subject to Article III, Sections 10 and 11, of said Rules and Regulations, among 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 or not they desire to be represented by Foremen's Association of America and Allied Steel Chapter No. 96, FAA, Independent, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*,⁸ I am constrained to disagree with the majority opinion.

⁸ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.