

In the Matter of CRUCIBLE STEEL COMPANY OF AMERICA (ATHA WORKS) and UNITED STEEL WORKERS OF AMERICA, C. I. O.

Case No. 2-C-5983.—Decided March 26, 1946

DECISION

AND

ORDER

On January 18, 1946, the Trial Examiners issued their Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties and none was held.

The Board has reviewed the Trial Examiners' rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's brief and exceptions and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiners.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Crucible Steel Company of America (Atha Works), Harrison, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steel Workers of America, C. I. O., as the exclusive representative of all employees in the Timekeeping Department of the Accounting Works Division at the respondent's Atha Works, Harrison, New Jersey, including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors, and all other employees

with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) In any manner interfering with the efforts of United Steel Workers of America, C. I. O., to bargain collectively with it.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with United Steel Workers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its Atha plant at Harrison, New Jersey, copies of the notice attached to the Intermediate Report, marked "Appendix A."¹ Copies of said notice to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. Jerome I. Macht, for the Board.

Reed, Smith, Shaw & McClay, by *Mr. Seward H. French, Jr.*, of Pittsburgh, Pa., and *Mr. W. L. Christon*, of New York, N. Y., for the respondent.

Rothbard, Harris & Oxfeld, by *Mr. Emil Oxfeld*, of New York, N. Y., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by United Steel Workers of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued its complaint dated December 10, 1945, against Crucible Steel Company of America (Atha Works), herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

¹ Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order."

With respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about July 30, 1945, and at all times thereafter refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on July 6, 1945, had designated and selected the Union as their representative for the purposes of collective bargaining, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent thereafter filed its answer in which it admitted that it had on or about July 30, 1945, and at all times thereafter refused to bargain collectively with the Union as the exclusive representative of the employees in the unit described in the complaint, although a majority of the employees in said unit had designated and selected the Union as their representative for the purposes of collective bargaining. The respondent denied, however, that such unit was appropriate for the purposes of collective bargaining, or that the designation of the Union resulted in its being the representative of the employees in such unit for the purposes of collective bargaining within the meaning of the Act. The respondent further denied that it had engaged in any unfair labor practices within the meaning of the Act.

Pursuant to notice, a hearing was held on January 7, 1946, at New York City before the undersigned, the Trial Examiners duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case, motion of counsel for the Board to conform the pleadings to the proof was granted without objection. At the close of the hearing, the respondent and the Board argued orally before the undersigned and the respondent subsequently filed a brief.

Upon the entire record in the case, and from their observation of the single witness at the hearing, the undersigned make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Crucible Steel Company of America, a New Jersey corporation, operates plants at Midland, Pittsburgh, and McKees Rock, Pennsylvania, Syracuse, New York, and Harrison and Jersey City, New Jersey. This proceeding relates solely to the Harrison plant, called the Atha Works. During the year ending November 30, 1945, respondent used raw materials at its Atha Works plant valued in excess of one million dollars, of which approximately 90 percent was shipped from points outside the State of New Jersey. During that same period, approximately 90 percent of the products manufactured at the Atha Works plant, valued in excess of one million dollars, was shipped to points outside the State of New Jersey.

At the hearing the respondent conceded that it was engaged in commerce within the meaning of the Act and was subject to the jurisdiction of the Board

II. THE ORGANIZATION INVOLVED

United Steel Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and representation by the Union of a majority therein

On June 7, 1945, the Board issued a Decision and Direction of Election in Case No. 2-R-5453¹ finding that all employees in the Timekeeping Department of the Accounting Works Division of the respondent's Atha Works, Harrison, New Jersey, including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors, and all other 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.

On July 6, 1945, pursuant to said Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Second Region.² On July 17, 1945, the Board certified the Union as the exclusive representative, for the purposes of collective bargaining, of the employees in the unit hereinabove described.

The respondent contends, as it did at the representation proceeding, that the unit as found by the Board was not an appropriate unit, but that the only appropriate unit should consist of all clerical employees in the accounting works division, including timekeepers. This contention was considered by the Board in the previous representation proceeding and was resolved against the views of the respondent. No new evidence was presented at this hearing which would bear upon this issue. Accordingly, we see no reason to examine this contention or the evidence in the representation proceeding *de novo*,³ and we find, in accordance with the Board's previous determination, that all employees in the Timekeeping Department of the Accounting Works Division at the respondent's Atha Works, Harrison, New Jersey, including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors, and all other 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. The undersigned further find that on and at all times after July 6, 1945, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on July 6, 1945, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment

2. The refusal to bargain

On July 19, 1945, the Union wrote to the respondent requesting a meeting "for the purpose of discussing Wages, Hours, and Working Conditions to cover

¹ 62 N. L. R. B. 186.

² The tally of ballots showed that of approximately 68 eligible voters, 47 cast valid votes, of which 43 were for the Union and 4 against.

³ *Matter of Swift & Co.*, 63 N. L. R. B. 718.

the Timekeepers at the Atha plant." The respondent replied on July 30, 1945, stating that it believed the Board's decision in the representation proceeding was "wholly wrong and inconsistent * * * with the intent, purpose, and spirit of the National Labor Relations Act." The letter further stated as follows: "It is our intention, therefore, to contest the decision of the Board, and this Company will not recognize your Union for the purpose of collective bargaining with respect to the Timekeepers at the Atha plant, unless directed to do so by the court of last resort."

At the hearing the respondent admitted its refusal to bargain with the Union, contending that it was not obligated to do so since the Board decision in the representation proceeding was erroneous. It is clear that the respondent's conduct constituted a refusal to bargain and the undersigned so find.

At the hearing, the respondent introduced evidence to the effect that after August 14, 1945, popularly known as V-J Day, the operations of the respondent at its Atha Works declined, resulting in considerable contraction in the composition of the appropriate unit. It is clear, however, that the respondent's refusal to bargain took place prior to this contraction and was in no way based upon this contraction either as a present or prospective consideration. Accordingly, we do not discuss its possible legal effect here, but will defer such discussion to the section on remedy.

The undersigned find that the respondent on July 30, 1945, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The undersigned find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As stated above, the respondent at the hearing introduced evidence to the effect that curtailment of operations since V-J Day had resulted in a sharp contraction of the appropriate unit. The evidence showed that there were 68 employees in the appropriate unit at the time of the election before the Board and that it was expected that this number would be reduced to 4⁴ as of January 11, 1946.⁵ It was the position of the respondent that this contraction

⁴The testimony of the respondent's witness was that there would be 3½ employees within the appropriate unit as of that date. He explained that he meant by this that one employee would work on timekeeping part time and part time on an addressograph machine. He stated, however, that this employee would be considered in the timekeeping department. She should therefore be included within the appropriate unit as found by the Board in the representation proceeding.

⁵At the time of the hearing there were eight employees in the unit. The respondent's witness could only speculate as to whether or not the operations of the plant might further decrease after January, or whether they might increase after that date.

in some way presented an entirely different situation from that present at the time of the election and that in consequence the case should be reopened and a new election held. We find no merit in this contention. There is no evidence here that the duties of the employees have in any way changed or that any factors have developed which should require a different finding as to the appropriate unit.

Further, assuming for purposes of argument, that this record contained evidence as to a loss of majority by the Union as a result of the contraction of operations, since such loss would have occurred after the refusal to bargain, such evidence would not alter our conclusion here. But here there is no evidence showing that the Union has lost its majority within the appropriate unit. We do not deem that a mere contraction of the unit raises a presumption of a loss of majority. If such a presumption were drawn or if there were an actual showing of loss of majority, it would, moreover, require speculation as to the causes for the loss of the majority. Indeed, it may be that the picture today would be entirely changed if the respondent had met and bargained with the Union and conceivably come to some agreement as to the procedure for the laying off of employees within the appropriate unit or as to the establishment of a preferential list for reemployment for these employees laid off. All of these questions are speculative and impossible of determination at this stage. Accordingly, we see no reason to depart from the standard practice of the Board, as sustained by the Supreme Court of the United States, to order the respondent to bargain collectively where it has found that the respondent has refused to bargain with the Union representing a majority at the time the unfair labor practice was committed.⁶ We will accordingly recommend that the respondent upon request bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit as found.

Because of the basis of the respondent's refusal to bargain, as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, we shall not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, we shall recommend that the respondent cease and desist from the unfair labor practices found and from in any manner interfering with the efforts of the Union to bargain collectively with it.⁷

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned make the following:

CONCLUSIONS OF LAW

1. United Steel Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees in the Timekeeping Department of the Accounting Works Division at the respondent's Atha Works, Harrison, New Jersey, including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors, and all other employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status

⁶ *Matter of Franks Bros. Company*, 44 N. L. R. B. 898, aff'd 321 U. S. 702.

⁷ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 428; *May Department Stores Co. v. N. L. R. B.*, 328 U. S. 376.

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.

3. United Steel Workers of America, C. I. O., was on July 6, 1945, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on July 30, 1945, and at all times thereafter to bargain collectively with United Steel Workers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommend that the respondent, Crucible Steel Company of America, Atha Works, Harrison, New Jersey, and its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steel Workers of America, C. I. O., as the exclusive representative of all employees in the Timekeeping Department of the Accounting Works Division at the respondent's Atha Works, Harrison, New Jersey, including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors, and all other employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) In any manner interfering with the efforts of United Steel Workers of America, C. I. O., to bargain collectively with it.

2. Take the following affirmative action which the undersigned find will effectuate the policies of the Act:

(a) Upon request bargain collectively with United Steel Workers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Post at its Atha plant at Harrison, New Jersey, copies of the notice attached to the Intermediate Report herein, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) File with the Regional Director for the Second Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington 25, D. C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

J. R. HEMINGWAY,
DAVID REIN,
Trial Examiners.

Dated January 18, 1946

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO THE RECOMMENDATIONS OF
TRIAL EXAMINERS

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with the efforts of United Steel Workers of America, C. I. O., to bargain collectively with us

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees in the Timekeeping Department of the Accounting Works Division at the Atha Works (Harrison, New Jersey), including working supervisors, but excluding the timekeeping department supervisor, the assistant regional supervisors and all other employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

CRUCIBLE STEEL Co. OF AMERICA,
Employer.

Dated. By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.