

In the Matter of WEST STEEL CASTING COMPANY and INTERNATIONAL  
MOLDERS & FOUNDRY WORKERS OF NORTH AMERICA (AFL)

*Case No 8-R-2055 —Decided June 20, 1946*

*Stanley & Smoyer, by Mr Eugènè B. Schwarts, and Mr W. F Toll,*  
both of Cleveland, Ohio, for the Company

*Messrs. James H. Martin, Jack Langley, and Issac C Chapman,* all  
of Elyria, Ohio, and *Mr. Carl Hubbell,* of Cleveland, Ohio, for the  
Union.

*Horan & Bell, by Mr R S Horan, and Mr. Joseph Alabise,* both of  
Cleveland, Ohio, for the Independent.

*Mrs Margaret H. Patterson,* of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Molders & Foundry Workers of North America (AFL), herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of West Steel Casting Company, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard C. Swander, Trial Examiner. The hearing was held at Cleveland, Ohio, on March 28, 1946. The Company, the AFL, and Westeel Independent Union, herein called the Independent, 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 and the Independent moved to dismiss the petition. 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:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

West Steel Casting Company, an Ohio corporation located in Cleveland, Ohio, is engaged in the manufacture, sale, and distribution of steel castings and wheels. The principal raw material used by the Company is scrap iron. During the 6 months preceding the hearing, it purchased approximately \$50,000 worth of such material, all within the State of Ohio. During the same period it produced finished products in the amount of \$500,000, approximately 10 percent of which was shipped out of the State.

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

International Molders & Foundry Workers of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Westeel Independent Union, unaffiliated, 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 A. F. L. as the exclusive bargaining representative of its production and maintenance employees asserting, as does the Independent, that a collective bargaining contract with the Independent signed on February 11, 1946, is a bar to this proceeding.

On July 21, 1941, as the result of a consent election, the Board certified the Independent as the exclusive bargaining representative of the Company's production and maintenance employees.<sup>1</sup> Thereafter, the Company and the Independent entered into a number of collective bargaining agreements, including a contract which was to expire on January 31, 1946, subject to 30-day automatic renewal. On August 7, 1945, the AFL filed its initial petition with the Board but withdrew it on November 2, 1945. On December 3, 1945, prior to the operative date of the renewal clause, the AFL filed the present petition.<sup>2</sup> In January

<sup>1</sup> *Matter of West Steel Castings Company*, 33 N. L. R. B. 694.

<sup>2</sup> The Company objected that the A. F. L. made no formal demand for recognition prior to the filing of the petition. Such a demand is not a prerequisite for the creation of a question concerning representation. See *Matter of Gunite Foundries Corporation*, 65 N. L. R. B. 43; *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1336.

1946, the Company and the Independent entered into negotiations for a new contract to replace the one about to expire. Because they were unable to reach an agreement on the terms of the new contract by January 31, 1946, the contracting parties extended their old contract for 1 month to February 28, 1946. On February 11, 1946, the Company and the Independent signed a new contract supplanting the old agreement. The Company and the Independent contend that this contract, which is for a 1 year term, is a bar to the present proceeding.

As indicated above, the February 11, 1946, agreement was signed after the AFL had filed its petition with the Board. Under established principles, therefore, the contract cannot operate as a bar.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

The Company and the Independent contend, however, that the effect of the timely filing of a petition in this case is dissipated by the fact that the AFL did not represent a substantial number of employees in the appropriate unit either at the time the petition was filed or at the time of signing of the February 11 contract; that, consequently, no question of representation existed on the latter date; and that they were entitled, regardless of the petition filed by the AFL, to enter into the new contract which is a bar to this proceeding.

We disagree. The fact that some of the cards were signed after the date of filing of the petition is not material. The submission of authorization cards to the Regional Director is an administrative expedient adopted by the Board to aid it in determining whether or not the petitioning union has sufficient *prima facie* interest to justify the Board in proceeding with an investigation.<sup>4</sup> The Board's administrative requirements are satisfied if, as in the present case, the petitioner has substantial representation at the time of the Field Examiner's preliminary investigation.<sup>5</sup>

The further point raised by the Company and the Independent, to wit, that in view of the possibility that many of the authorization cards secured by the AFL were signed after the date of execution of the February 11 contract, the AFL did not represent a substantial number of employees on the latter date, must also be rejected. Inasmuch as the authorization cards were not submitted as proof of the number of employees who had designated the AFL by February 11, but solely

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<sup>3</sup> The Field Examiner reported on March 15, 1946, that the AFL had submitted 123 authorization cards, of which 67 bore the names of employees on the January 11, 1946, pay roll, and that 64 were dated in 1945, 50 were dated on unspecified dates in February, 1946, and 9 were undated. She further reported that there were approximately 218 employees in the appropriate unit.

<sup>4</sup> See *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560.

<sup>5</sup> See *Matter of Buffalo Arms Corporation*, *supra*.

to meet the Board's administrative requirements,<sup>6</sup> they are clearly incompetent evidence of the *maximum* number who had designated the AFL on any date. We have, in any event, already adverted to the dispositive rule,—that the filing of a formal petition prior to the execution of a contract prevents that contract from constituting a bar.<sup>7</sup>

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 AFL seeks a unit of all production and maintenance employees, including inspectors, but excluding factory timekeepers, office and clerical employees, truck driver, guards, wood and metal pattern makers and apprentices, technical and laboratory employees, superintendents, foremen, assistant foremen, and all supervisory employees. Except for the classification, factory timekeepers, whom the Company and the Independent desire to include, all the parties agreed upon the composition of the aforesaid unit.

*Factory timekeepers:* Factory timekeepers work solely in the factory proper, following the metal through its various operations and heats, maintaining card records on the specifications of the metal and on the time of the employees who work on the various operations. The cards are then turned over to the department foreman. These employees are hourly paid, work plant instead of office hours and have the vacations and other privileges of plant employees. They have been bargained for by the Independent as collective bargaining representative of the production and maintenance employees. Inasmuch as these factory timekeepers appear to be plant clerical employees and have been included in the production and maintenance unit represented by the Independent, we shall include them in the unit.<sup>8</sup>

We find that all production and maintenance employees of the Company, including inspectors and factory timekeepers, but excluding clerical

<sup>6</sup> As we have frequently stated, the report of a Board agent with respect to a claim of authorization is taken, not as proof of the precise number of employees who desire to be represented by a labor organization, but rather to give reasonable assurance that a substantial number of employees desire so to be represented, and thus to rid the Board's investigation process of unfounded claims. See *Matter of Amos-Thompson Corporation* 49 N. L. R. B. 423.

<sup>7</sup> Lawful bargaining relationships are not to be harrassed by the assertion of baseless or dilatory claims. See *Matter of General Electric X-Ray Corporation*, 67 N. L. R. B. 997; *Matter of Henry & Allen, Inc.*, 68 N. L. R. B. 724. We distinguish, however, between delay in filing a petition, which is the responsibility of the claimant, and delay in processing the petition, over which the claimant has no control. Once the petition has been filed, the claim of representation is immediately subject to the Board's administrative scrutiny, and to the attendant risk of dismissal as insubstantial. Where, as is here the case, a petition has been timely filed under the Board's established rules, the petitioner cannot in good conscience be held accountable for the time elapsing before the preliminary investigation was made.

<sup>8</sup> See *Matter of Sharite Brothers Machine Company*, 57 N. L. R. B. 1546; *Matter of Morrow Manufacturing Company*, 59 N. L. R. B. 90, *Matter of Frick Company*, 63 N. L. R. B. 837.

and office employees, truck drivers, guards, wood and metal pattern-makers and apprentices, technical and laboratory employees, superintendents, foremen, 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 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 West Steel Casting Company, Cleveland, Ohio, 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 Eighth 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 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 International Molders & Foundry Workers of North America (AFL), or by Westeel Independent Union, for the purposes of collective bargaining, or by neither.

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