

In the Matter of WHEELING STEEL CORPORATION *and* UNITED FOREMEN
OF AMERICA, LOCAL 1444 (C. I. O.)

Case No. 8-R-1987.—Decided July 1, 1946

Messrs. William F. Howe and Karl M. Dollak, both of Washington, D. C., and *Mr. A. K. Monroe*, of Wheeling, W. Va., for the Company.
Mr. Frank Lasick, of Bellaire, Ohio, for the Union.
Mr. Seymour M. Alpert, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Foremen of America, Local 1444 (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wheeling Steel Corporation, Yorkville, Ohio, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. The hearing was held at Yorkville, Ohio, on May 1, 1946. The Company and the Union 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 made two separate motions to dismiss the petition, one on the ground that the Union is not a labor organization within the meaning of the Act, and the other on the ground that its foremen and supervisors are not employees within the meaning of the Act. The Trial Examiner referred these motions to the Board. For reasons stated hereinafter, both motions are 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 The name of the Company appears as amended at the hearing.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wheeling Steel Corporation, a Delaware Corporation, is engaged in the manufacture and sale of tin plate, terneplate, and black plate. The Company operates several plants including the one at Yorkville, Ohio, which is solely involved in this proceeding. The Company annually purchases raw materials for use at this plant in an amount exceeding \$10,000,000, more than 10 percent of which is obtained from points outside the State of Ohio. Of the Company's annual sales, which exceed \$20,000,000 in value, over 75 percent represents shipments to points located outside 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 ORGANIZATION INVOLVED

United Foremen of America, Local No 1444, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership supervisory employees of the Company.²

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the collective bargaining representative of any of its supervisory employees.

As noted above, the Company moved to dismiss the petition on the ground that its foremen and supervisors are not employees within the meaning of the Act. For the reasons stated by us in the *L. A. Young* case,³ and following cases,⁴ we find, contrary to the Company's contention, that its foremen and supervisors are employees within the meaning of Section 2 (3) of the Act.

² In support of its initial motion to dismiss the petition, the Company contends that the Union is not a labor organization within the meaning of the Act, because the Union never formally accepted the charter issued to it by the C. I. O., and because the Union's membership never formally adopted a constitution and bylaws. We find this contention to be lacking in merit. The form of the Union's internal organization, to which the Company's objections are directed, is clearly not a prerequisite for recognition as a labor organization under the Act. Section 2 (5) of the Act defines a "labor organization" in the broadest terms declaring that "the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The Union meets the test of a labor organization prescribed by the statute. Accordingly we find it to be a labor organization within the meaning of the Act. See *Matter of Industrial Collieries Corporation*, 65 N. L. R. B. 683, *Matter of Gielow, Inc.*, 60 N. L. R. B. 1477.

³ *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298.

⁴ *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294, *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997; *Matter of Simmons Company*, 65 N. L. R. B. 984; *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannon Coal Division*, 66 N. L. R. B. 386

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 UNITS

The Union seeks a unit of all production, maintenance, and plant-protection supervisory employees below the rank of assistant department superintendent. Should the Board refuse to include plant protection supervisory employees in the desired unit, the Union requests, in the alternative, that a separate bargaining unit of these employees be established. Without waiving its position that these employees cannot form any appropriate unit, the Company asserts that the grouping sought by the Union is inappropriate in that it would include plant-protection supervisors and employees who, although in the desired classifications, do not in fact possess supervisory authority.

We have heretofore held that the pattern for supervisory employees should generally follow the pattern of organization established for the rank and file employees in the absence of a history of collective bargaining for supervisory employees in the industry involved. The record reveals that the Company's rank and file employees are organized into separate units of plant protection employees, clerical employees, and production and maintenance employees, and there is apparently no history of collective bargaining for supervisors in this industry. Accordingly, we shall reject the Union's primary position which contravenes the established rank and file bargaining pattern, but shall instead adopt the Union's alternative position and find two units appropriate, one consisting of supervisory production and maintenance employees and the other of supervisory plant-protection personnel.⁵

We now come to a specific consideration of the two units:

A. The plant-protection supervisory unit

The Company employs five plant-protection supervisory employees. Four of them are lieutenant patrolmen who are responsible to the fifth who is a chief patrolman. The lieutenant patrolmen are salaried and unarmed; three of them are deputized by the County. On their respective turns they supervise the plant guards and can effect a change in the status of these employees. The chief patrolman⁶ is directly responsible to the plant assistant general manager, and it appears that he is on the same level of supervision as the production

⁵ *Matter of Federal-Mogul Corporation*, 66 N. L. R. B. 532; *Matter of Westinghouse Electric Corporation (East Springfield Works)*, 66 N. L. R. B. 1297.

⁶ The Union does not seek to represent him.

and maintenance department heads who are excluded by agreement from the production and maintenance supervisory unit. Under all the circumstances we find that the lieutenant patrolmen, excluding the chief patrolman, form a distinct homogeneous group appropriate for the purposes of collective bargaining.

B. The production and maintenance supervisory unit

From an operational standpoint, the Company's Yorkville Works is broken down into nine major departments. Each department, with two exceptions,⁷ is headed by a department superintendent, who is assisted in most instances by an assistant department superintendent. Below the rank of assistant department superintendent appears the following job classifications: general foremen, foremen, assistant foremen, general turn foremen, turn foremen, assistant turn foremen, leaders, and assistant leaders. The employees within these classifications with the exceptions of the assistant turn leader—black plate and reclaim department, assistant coater leader—lithographing department, and coil storage leader—lithographing department⁸ fall within the two lowest levels of supervision and possess supervisory authority within the Board's customary definition of that term. There is apparently no clear line of demarcation between the two lowest levels of supervision, and all the supervisors have substantially the same authority over their subordinates in matter of discipline, of specifying work to be performed, and of changing assignments. In addition, most of them participate in the first stage of the grievance procedure. The fact that a few of the leaders and assistant leaders take no part in the first stage of the grievance procedure while of some significance is not, contrary to the Company's position, the sole determinative test of supervisory status. In all such instances, we are persuaded that the duties, powers, and responsibilities of these leaders and assistant leaders bring them clearly within our usual supervisory definition. In view of the foregoing, we conclude that the Company's general foremen (except general foreman—tin plate department, and general foreman—packaging, warehouse, and shipping department), foremen, assistant foremen, general turn foremen, turn foremen, assistant turn foremen, leaders (except coil storage leaders—lithographing department), and assistant leaders (except assistant turn leader—black plate and reclaim department and assistant

⁷ The head of the tin plate department, and the head of the packaging, warehouse, and shipping department are designated as general foremen. They have the duties, powers, and responsibilities of department superintendents, are treated as such by the Company, and the parties agree that they should be excluded from the unit.

⁸ These three employees either have no subordinates or lack the power to make effective recommendations with respect to their subordinates, and accordingly are not supervisory within the Board's customary definition of that term.

coater leader—lithographing department) constitute an identifiable and homogeneous group which may function together for collective bargaining purposes.

There remains for consideration the question of including in or excluding from the production and maintenance supervisory unit certain employees bearing special job titles.

Head reckoning checkers—tin plate assorting department: These two employees assemble and keep records for inventory and pay purposes, and are charged with the supervision of several reckoning checkers who fall within the rank and file clerical unit. Accordingly, we shall exclude them as clerical supervisors.⁹

Lubricating and combustion engineer—electrical department: In the course of his work this individual is charged with the supervision of four employees who fall within the rank and file production and maintenance unit. It appears that his interests are identified with those of the other supervisors in the production and maintenance supervisory unit hereinafter established. We shall therefore include him.

Electrical Specialists—electrical department: This title is a misnomer in that these two employees are in fact electrical foremen, supervising the work of subordinates who fall within the rank and file production and maintenance unit. The interests of the electrical specialists are clearly identified with the supervisory employees already included in the appropriate unit. We shall therefore include the electrical specialists.

Chief inspector of tin plate—tin plate assorting department: This employee is in fact a foreman in the tin plate assorting room, supervising inspectors who fall within the rank and file production and maintenance unit. It appears that he has interests in common with those already included within the unit. We shall include him.

Mechanical specialist—mechanical, maintenance and service department: This individual has no regular subordinates. On those occasions when employees are assigned to assist him he works along with them and assumes a role comparable to that of a skilled mechanic in relation to his helpers. Inasmuch as he is not a supervisor within the Board's customary definition, we shall exclude him.

We find that the following units are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All plant-protection supervisory employees at the Company's Yorkville, Ohio, plant, excluding the chief patrolman and all other supervisory employees.

⁹ *Matter of The Midland Steel Products Company, Parish & Bingham Division, supra.*

2. All general foremen, foremen, assistant foreman, general turn foremen, turn foremen, assistant turn foremen, leaders, and assistant leaders, in the production and maintenance departments of the Company's Yorkville plant, including lubricating and combustion engineer—electrical department, electrical specialists—electrical department, and chief inspector of tin plate—tin plate assorting department, but excluding mechanical specialist—mechanical, maintenance and service department, coil storage leader—lithographing department, assistant turn leader—black plate and reclaim department, assistant coater leader—lithographing department, head reckoning checkers—tin plate assorting department, general foreman—tin plate department, general foreman—packaging, warehouse, and shipping department, plant-protection supervisory employees, and all other supervisory employees.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by elections by secret ballot among employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 Wheeling Steel Corporation, Yorkville, Ohio, elections 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, subject to Article III, Sections 10 and 11, of said Rules and Regulations, among employees in the units 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 elections, to determine whether or not they desire to be represented by United Foremen of America, Local 1444, C. I. O., for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting.

For the reasons stated in my dissenting opinions in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*,¹⁰ and *Matter of Packard Motor Car Company*,¹¹ I am constrained to dissent from this decision.

¹⁰ 66 N. L. R. B. 386.

¹¹ 61 N. L. R. B. 4.