

In the Matter of AMERICAN SHEET METAL WORKS and UNITED STEEL-
WORKERS OF AMERICA, C. I. O.

Case No. 15-R-1635.—Decided July 13, 1946

Mr. Samuel Lang, of New Orleans, La., for the Company.

Mr. Michael J. Neary, of New Orleans, La., for the Union.

Mr. Lewis H. Ulman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Sheet Metal Works, New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before C. Paul Barker, Trial Examiner. The hearing was held at New Orleans, Louisiana, on May 8, 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. 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,¹ the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American Sheet Metal Works is a corporation having its office and plant in New Orleans, Louisiana. It is engaged in the fabrication, sale, and distribution of sheet metal products. The principal raw materials used in connection with the operations of the Company are

¹ A portion of the testimony at the hearing was inadvertently lost when the reporter ran out of tape. The Company has submitted a stipulation covering this testimony, signed by all of the parties, which is hereby accepted; the record is corrected accordingly.

steel, copper, aluminum, lumber, paint, and hardware. Annually, the Company uses raw materials valued in excess of \$100,000, 60 percent of which is purchased outside of the State of Louisiana. Annually, it manufactures finished products valued in excess of \$200,000, approximately 60 percent of which is shipped and sold outside the State of Louisiana.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership 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 certain of its employees until the Union has been certified by the Board in an appropriate unit.

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

In accordance with a stipulation of the parties, and upon the entire record, we find that all production and maintenance employees of the Company, excluding clerical employees and all 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.²

V. THE DETERMINATION OF REPRESENTATIVES

We are of the opinion that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The C. I. O. requested at the hearing that the pay roll used to determine eligibility to vote in the election be one between the dates March 21, 1946, and April 13, 1946. This request is based upon testimony in the record that from the day the petition herein was filed,

² The unit herein is substantially the same as the unit found appropriate in two previous cases involving the Company (*Matter of American Sheet Metal Works*, 33 N. L. R. B. 750, and *ibid.*, 41 N. L. R. B. 1383). In these cases a journeyman and an apprentice were excluded from the unit. The journeyman is no longer employed and the apprentice is now employed as a mechanic within the unit agreed upon by the parties.

March 21, 1946, to the day of the hearing, May 8, 1946, 35 of the employees within the unit petitioned for had been separated from employment and that more severances were contemplated at the time of the hearing as a result of a shortage of raw materials occasioned by a strike in the steel industry.

The record discloses that when the hearing was held the Company was operating on odds and ends of steel that it had on hand and that it had no expectation of receiving new shipments for a considerable period of time. Moreover, the Company has no policy concerning the reemployment of persons separated from its employ. Accordingly, and based upon all the peculiar facts presented in this case, we find that the employees who were laid off up to the time of hearing were not temporarily laid off, within our usual meaning of that term.³ The Union's request for an eligibility date prior to the separations is denied.

The Company opposes an election at this time as its officers are contemplating possible changes in the nature of the Company's business which, if placed in effect, would require a smaller working force composed chiefly of skilled workers. It urges that if these plans materialize and an early determination of representatives is made the workers retained might be represented by a bargaining agent that they did not choose. Finally, the Company urges that if it should return to its former operations and enlarge its working force, its employees at that time might also be represented by a bargaining agent that they did not choose. The Company's contentions are not novel and we find no merit in them.

We perceive no reason to delay an immediate determination of representatives because of these speculative considerations. Should either of these hypotheses materialize, however, and other requisite facts be proved, we shall at an appropriate future time entertain a new petition within less than 1 year from the date of any certification we may issue in the present proceeding.⁴

Those eligible to vote in the election hereinafter directed shall be employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

³ In his testimony the Company's president stated at one point that he considered the severed employees to be temporarily laid off. But a reading of his entire testimony persuades us that, for all practical purposes, these employees have been definitively separated from the Company's employ, although there is some likelihood that they may be rehired if and when full operations are resumed.

⁴ See *Matter of M. P. Moller, Inc.*, 56 N. L. R. B. 16, and *Matter of Aluminum Company of America*, 52 N. L. R. B. 1040, for the prerequisites to the entertainment of a new petition less than 1 year from the issuance of a certification.

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 American Sheet Metal Works, New Orleans, Louisiana, 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 Fifteenth 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 or not they desire to be represented by United Steelworkers of America, CIO, for the purposes of collective bargaining.

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