

In the Matter of BETHLEHEM STEEL COMPANY and UNITED STEEL-  
WORKERS OF AMERICA, C. I. O.

*Case No. 6-C-1000.—Decided April 10, 1947*

*Mr. Joseph Lepie*, for the Board.

*Cravath, Swaine & Moore*, by *Mr. John H. Morse*, of New York  
City, for the respondent.

*Mr. Daniel W. Skelly*, of Johnstown, Pa., for the Union.

*Mr. Julius Topol*, of counsel to the Board.

DECISION

AND

ORDER

On September 18, 1946, Trial Examiner William J. Scott issued his 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. On February 11, 1947, the Board, at Washington, D. C., heard oral argument in which the respondent participated; the Union did not appear.<sup>1</sup>

The Board has reviewed the rulings of the Trial Examiner 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, the contentions advanced by the respondent at the oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

The Trial Examiner found that the respondent refused to bargain collectively with the Union on May 3, 1945, and at all times thereafter, in violation of Section 8 (5) of the Act. We agree for the reasons hereinafter indicated.

<sup>1</sup> Chairman Herzog has read the transcript of this oral argument.

The respondent instituted its plant-protection system at its Johnstown plant a number of years before the recent war. During the war, the patrolmen constituting the plant-protection force were enrolled as civilian auxiliaries to the Federal military police and as volunteer police officers of the Commonwealth of Pennsylvania. At the time of the Union's certification as bargaining representative of the patrolmen, in July 1943, there were approximately 300 persons in the plant-protection force, of whom about 25 served in a supervisory capacity. Of the non-supervisory members of the protection force, 5 performed clerical duties at patrol headquarters, and 271 were actively engaged in protecting the plant. It is this latter group of 271 patrolmen, alone, which the Board, in the representation proceeding, found to be an appropriate unit for collective bargaining. After that proceeding, in December 1944, the patrolmen were demilitarized, but they retained their commissions as volunteer police officers of the Commonwealth of Pennsylvania.

The duties of the patrolmen in the unit, before and during the period of militarization and after demilitarization, have been the normal duties of plant-protection personnel. They wear uniforms and carry arms. Some of them patrol assigned "beats" covering important sections of the plant, while others guard plant gates. The patrolmen on beats inspect various types of equipment, admonish employees concerning violation of plant safety rules, such as that restricting smoking in certain parts of the plant, and, in case of violation of other plant rules, such as those prohibiting wandering in unauthorized plant areas or being intoxicated on the job, the patrolmen report employees to the supervisory authorities. When instructed to do so by a supervisor, the patrolmen escort employees from the plant or to an authorized area. The patrolmen on gate duty are primarily concerned with preventing the unauthorized movement, either into or out of the plant area, of persons, materials, and vehicles. None of the patrolmen in the unit have any authority to hire, discharge, or discipline employees, or to recommend such action.

Upon their militarization, the patrolmen agreed to support and defend the Constitution of the United States against all enemies, to discharge faithfully their duties as civilian auxiliaries to the military police, to protect war materials and utilities, and to obey all orders issued in connection therewith by the President of the United States or his duly authorized agent. When they accepted their commissions as volunteer police officers, they took an oath to defend the United States Constitution, and to discharge faithfully their duties as volunteer police officers. As such police officers, they have all the powers of Johnstown city policemen. The record is barren of any evidence, however, that either the Army, during the period of militarization, or the Commonwealth of Pennsylvania, at any time, has exercised any

measure of control over conditions of the patrolmen's employment. During the period of militarization and of deputization as city policemen, as before, the respondent has set qualifications of persons to be employed as patrolmen, hired them, assigned them their duties and superintended them in the performance thereof, paid their salaries, and discharged them, all without interference from the Army or the Commonwealth of Pennsylvania, as indicated above. In addition, during the period of militarization and of deputization as city policemen, as before, the patrolmen received the same benefits under social security, unemployment compensation, and workmen's compensation laws, as the respondent's other employees.

The respondent seeks to justify its refusal to bargain on May 3, 1945, on the grounds, *inter alia*, (1) that the patrolmen in the unit are not employees within the meaning of the Act; (2) that a unit of such patrolmen is not appropriate; and (3) that the Union was precluded from representing the respondent's plant-protection employees by reason of the fact that the Union already represented the respondent's production and maintenance employees. The respondent urged the first two of these contentions in the representation proceeding which preceded the instant case, and we found them to be without merit.<sup>2</sup> We have considered them *de novo* for the purposes of this proceeding. It is clear from our description of the duties and status of the patrolmen, and from the record as a whole, that the material facts in this case relative thereto are substantially similar to those found to exist in numerous previous cases involving plant guards, in which contentions similar to those here urged have been advanced.<sup>3</sup> For the reasons indicated in those cases, in addition to those set forth in our decision in the representation proceeding and in the Trial Examiner's Intermediate Report herein, we reject these three contentions as being without merit. We find that the patrolmen are employees of the respondent, within the meaning of the Act, and that they constitute an appropriate unit for the purposes of collective bargaining.

The respondent further contends that the Board failed to prove that the Union represented a majority of the patrolmen on May 3, 1945, the date of the alleged refusal to bargain, inasmuch as the Board's certification of the Union, the sole proof of its majority status, had then become stale. We find no merit in this contention. The certification, which we issued in July 1943, clothed the Union with status as the exclusive bargaining representative of the patrolmen. Under general principles, and for purposes of practical administration of the Act, such status is presumed to continue until shown to

<sup>2</sup> *Matter of Bethlehem Steel Company*, 50 N. L. R. B. 713.

<sup>3</sup> See, for example, *Matter of Jones & Laughlin Steel Corporation*, 72 N. L. R. B. 975, *Matter of Wilson & Co., Inc.*, 67 N. L. R. B. 662, *Matter of Armour Company*, 63 N. L. R. B. 1200, *Matter of Aluminum Company of America*, 63 N. L. R. B. 828, *Matter of Diavo Corporation*, 52 N. L. R. B. 322.

have ceased or until such time as circumstances arise which indicate that the presumption no longer holds true.<sup>4</sup> Although the Union's certification had been in force for approximately 21 months on May 3, 1945, the respondent on that date made no claim that the Union did not then represent a majority of the patrolmen; rather, in refusing to bargain, the respondent notified the Union that the respondent desired to postpone collective bargaining until the courts had finally adjudicated other cases involving issues similar to those present in this case.<sup>5</sup> Moreover, so far as appears, no rival union had presented a request for recognition or was engaged in organizing the respondent's patrolmen at the date of the refusal to bargain.<sup>6</sup>

Thus, apart from mere lapse of time, the respondent had no reason to doubt that the Union represented a majority of the patrolmen and, indeed, the respondent had no such doubt for it expressed none on May 3, 1945. The Union, upon being certified in July 1943, promptly entered into negotiations with the respondent for the consummation of a contract. Disputed issues between them were referred to the National War Labor Board for determination and were pending before that agency until December 1944, when the Union withdrew the dispute. Clearly, at that time we would not have entertained a petition of a rival union for certification of representatives, inasmuch as the Union had not had reasonable opportunity since certification to demonstrate its effectiveness as a bargaining agent.<sup>7</sup> While the Union made no request for resumption of bargaining negotiations until approximately 4½ months after the dispute had been withdrawn from the WLB, it appears that during the intervening period the Union and the respondent were occupied in negotiating a contract covering the respondent's production and maintenance employees. The Union's request, on May 3, 1945, to resume bargaining negotiations on behalf

<sup>4</sup> See *N L R B v. Whittier Mills Company, et al*, 111 F (2d) 474, 478 (C C A 5), enf'g 15 N L R B 457

<sup>5</sup> The respondent thereby referred to *Jones & Laughlin Steel Corporation v N L R B*, 146 F (2d) 718 (C C A 6), reaffirmed 154 F. (2d) 730 (C C A 6), cert granted Dec 23, 1946, and *N L R B v. E. C Atkins & Company*, 147 F (2d) 730 (C C A 7), reaffirmed 155 F (2d) 567 (C C A 7), cert granted, Dec 23, 1946

<sup>6</sup> The respondent contends that, while practical administration of the Act justifies a presumption of continuing majority status for a reasonable time after issuance of a certification, the presumption loses force where a "substantial change in the situation" takes place after certification. By "substantial change of situation," the respondent refers to a reduction in the number of patrolmen in the unit from 271, at the date of the election, to 154, at the date of the respondent's refusal to bargain. The record shows, however, that there was no turn-over whatsoever of the employees in the unit, the 154 patrolmen employed on May 3, 1945, having been in the unit on the date of the election. Furthermore, there has been no alteration in the scope or character of the unit or of the duties performed by the patrolmen. Under these circumstances, we are of the opinion and we find that the reduction in the number of patrolmen in the unit did not affect the Union's authority to represent the patrolmen at the time of the respondent's refusal to bargain. Cf. *Matter of Virginia Bridge Company*, 68 N L R. B. 295, *Matter of Pacific Plastic & Mfg. Co., Inc.*, 68 N. L R B 53

<sup>7</sup> See *Matter of Allis-Chalmers Manufacturing Company*, 50 N L R B 306, *Matter of American-Marsh Pumps, Inc.*, 62 N. L R B 931; *Matter of Craddock-Terry Shoe Corporation*, 67 N L R B 105

of the patrolmen followed within 10 days the signing of a contract for the production and maintenance workers. In any event, we are of the opinion that the time which elapsed from the date of the certification to the date of the refusal to bargain, a total of 9 months exclusive of the War Labor Board proceeding, did not afford the Union a reasonable period of undisturbed bargaining relations, and that, under the circumstances, the certification had full force and effect on May 3, 1945.

### 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, Bethlehem Steel Company, Johnstown, Pennsylvania, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all patrolmen at its Johnstown, Pennsylvania, plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants, and the chief clerk and clerks at the patrol headquarters, with respect to grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(b) Engaging in any other act in any manner interfering with the efforts of United Steelworkers of America, C. I. O., to negotiate for or represent the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

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

(a) Upon request, bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post, throughout its plant in Johnstown, Pennsylvania, copies of the notice attached to the Intermediate Report and marked "Appendix A."<sup>8</sup> Copies of such notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by an authorized representative of the respondent, be posted by the respondent.

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<sup>8</sup> This 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." In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words "A Decree of the United States Circuit Court of Appeals enforcing."

ent 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 Sixth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. JAMES J. REYNOLDS, JR., dissenting:

I agree with my colleagues that the guards constituting the appropriate unit in this case are employees within the meaning of the Act regardless of their status as volunteer police officers of the city of Johnstown. However, since they are required to exercise monitorial duties over those employees already represented by the petitioning union, and for the reasons stated in my dissenting opinion in the *Matter of Monsanto Chemical Company*, 71 N. L. R. B. 11, I do not believe the purposes of the Act will be effectuated by following the majority view.

#### INTERMEDIATE REPORT

*Mr. Joseph Lepie*, for the Board.

*Cravath, Swanne & Moore*, of New York City, N. Y., by *Mr. John H. Morse*, for the respondent.

*Mr. Daniel W. Skelly*, of Johnstown, Pa., for the Union

#### STATEMENT OF THE CASE

Upon an amended charge duly filed by United Steelworkers of America (C I O.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint dated May 27, 1946, against Bethlehem Steel Company, Johnstown, Pennsylvania, 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.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent on or about May 3, 1945, and at all times thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees with 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 15, 1943, had designated and selected the Union as their representative for the purpose of collective bargaining, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter, the respondent filed its answer, in which, in substance, it admitted that it had refused to bargain with the Union. Respondent also admitted certain other allegations in the complaint but denied that its acts constituted an unfair labor practice.

Pursuant to notice a hearing was held in Johnstown, Pennsylvania, on July 8, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a union official. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. Motions made by the respondent during and at the close of the hearing to dismiss the complaint were denied. At the conclusion of the hearing a motion by Board's counsel to conform the pleadings to the proof with respect to formal matters was granted by the Trial Examiner without objection.

Counsel for the Board and respondent argued orally on the record. Opportunity was afforded the parties to file briefs. A brief has been received from respondent's counsel.

Upon the entire record of the case and from his observation of the witnesses, the undersigned makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Bethlehem Steel Company, a Pennsylvania corporation, is engaged at its Johnstown, Pennsylvania, plant, in the manufacture and production of various steel products. During the calendar year 1945, the aggregate volume of raw materials and other items purchased for the use at the Johnstown plant exceeded 1,000,000 net tons, of which approximately 45 percent was delivered to the plant from points outside the Commonwealth of Pennsylvania. During the same period the volume of finished products exceeded 1,000,000 net tons, of which approximately 70 percent was shipped to points outside the Commonwealth of Pennsylvania. The undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

#### II THE ORGANIZATION INVOLVED

United Steelworkers 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 unit alleged as appropriate and the Union's representation of a majority therein

On June 17, 1943, as alleged in the complaint, the Board, in a decision and Direction of Election, found that all patrolmen of the respondent at its Johnstown, plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants, and the chief clerk and clerks at the patrol headquarters, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>1</sup>

On July 15, 1943, an election was held pursuant to the Board's Decision and Direction of Election of June 17, 1943, and in accordance with the Rules and Regulations of the Board. A majority of the employees in the unit voted for the Union.<sup>2</sup> No objections to the election were filed by any of the parties within the time provided therefor and on July 26, 1943, the Board certified the Union to be the exclusive representative of the employees in the unit above-mentioned for the purpose of collective bargaining.

<sup>1</sup> *Bethlehem Steel Company*, 50 N. L. R. B. 713

<sup>2</sup> Tally of ballots showed that of approximately 271 eligible voters, 228 cast valid ballots, 165 for the Union, 63 against.

## 2. The refusal to bargain

Following its certification as bargaining representative, the Union commenced negotiations with the respondent for a collective bargaining agreement in the plant protection unit. Thereafter, the Union and the respondent held a number of collective bargaining conferences until December 8, 1943, but no contract was consummated. On December 8, 1943, the Union submitted to the National War Labor Board a dispute arising out of the failure of the parties to agree upon certain provisions of the proposed agreement between them. On December 24, 1944, the Union withdrew the dispute from the Board before any hearing had been held thereon. On May 3, 1945, the Union requested the respondent to resume negotiations. The respondent refused, contending that the unit was not appropriate and suggested that negotiations be deferred until the United States Supreme Court had decided a pending case involving similar issues. Thereafter, the Union attempted several times to negotiate but without success.

## 3. The duties and status of the patrolmen

The patrolmen are the usual plant-protection employees, hired to protect the company property, prevent trespass and assist in enforcing company regulations and disciplinary measures. During the war they were enrolled as auxiliary military police of the United States Army but were demilitarized prior to December 26, 1944. They are commissioned by the Commonwealth of Pennsylvania as Voluntary Police Officers of that Commonwealth, and as such are under and subject to the direction of Local Police Departments or Commissions for the purpose of preventing injury and destruction to the various industries of the Commonwealth and to suppress riots and to preserve the public peace and safety. They possess all the powers of police officers of the several cities, boroughs and townships of the Commonwealth and are authorized to arrest upon view, with or without warrant, any person apprehended in the commission of any offense against the laws of the Commonwealth or of the United States. Their enrollment as auxiliary military police of the United States and their commission as voluntary police officers of the Commonwealth of Pennsylvania has never basically affected the respondent's control and supervision over them. Their working conditions are controlled by the respondent and they are paid by the respondent. They have no supervisory authority with respect to the wages, hours, or other conditions of employment of the production and maintenance employees.

## 4. The respondent's contentions, and conclusions with respect thereto

The respondent takes the position that it is under no obligation to bargain with the Union as the exclusive bargaining representative in the unit for substantially the following reasons:

- (1) Patrolmen are not employees within the meaning of the Act
- (2) Patrolmen do not constitute an appropriate unit.
- (3) The Union did not represent a majority of employees in the unit at the time of the alleged refusal to bargain.
- (4) The Union cannot represent both a unit of patrolmen and that of the production and maintenance employees.

These contentions are hereinafter considered in the order indicated.

### 1 As to the contention that patrolmen are not employees

Substantially the same contention has heretofore been considered by the Board on numerous occasions and ruled on adversely to the respondent's position.<sup>3</sup>

<sup>3</sup> *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892, and cases cited therein; *Matter of Standard Steel Company*, 62 N. L. R. B. 660, *Matter of Armour and Company*, 63

To support its position the respondent relies on the decision of the United States Court of Appeals for the Seventh Circuit in the *E. C. Atkins* case.<sup>4</sup> That the Board has not acquiesced in this decision is reflected by its decision in the case of *General Cable Corporation*<sup>5</sup>

Under the circumstances, the undersigned is constrained to adhere to the clear policy of the Board as presently established. He accordingly finds that patrolmen are employees within the meaning of the Act.

2. As to the contention that patrolmen do not constitute an appropriate unit

This contention, likewise, has been raised in many other cases previously considered by the Board and has been uniformly decided adversely to the respondent's position here.<sup>6</sup> In its previously decided cases the Board has taken into account, as the undersigned does here, the considerations of public policy and alleged conflict of interest and allegiance which the respondent stresses. There is nothing in the record of the instant case to indicate that the duties, obligations, and status of the respondent's patrolmen has ever, now or in the past, differed materially from that of militarized or deputized plant protection employees who the Board has consistently held may form appropriate bargaining units.

Respondent in support of its position relies on the Board's decision in the case of the *Maryland Drydock Company*.<sup>7</sup> This decision has been reversed.<sup>8</sup> Accordingly it is found that the respondent's contention, above noted, is without merit.

3. As to the contention that the Union did not represent a majority at the time of the refusal to bargain

The counsel for the Board relied solely on the results of the election, held July 15, 1943, and the Board's certification July 26, 1943, for proof of its majority.

The respondent claims it is unreasonable to assume that the Union had a continuing majority from the time of the election until May 3, 1945, and that therefore the Board should have produced proof of such majority at the hearing.

After its certification on July 26, 1943, as previously stated, the Union and respondent continued bargaining negotiations until December 8, 1943, when the Union submitted a dispute arising from the negotiations to the War Labor Board. The issue remained there until December 24, 1944, when it was withdrawn by the Union before any hearing was held. From December 24, 1944, to May 3, 1945, the Union made no request to resume negotiations for the reason that negotiations were pending between the production and maintenance employees concerning the basic steel contract.

Under the principle enunciated in the *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306, and related cases, the time spent in attempting to settle the dispute before the War Labor Board should be excluded. The record thus shows the Union has only had approximately 9 months in which to negotiate a contract.

N. L. R. B. 1200, *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298, *Matter of E. R. Squibb & Sons*, 67 N. L. R. B. 557, *Matter of Briggs-Indiana Corporation*, 68 N. L. R. B. 587.

<sup>4</sup> *N. L. R. B. v. E. C. Atkins & Co.*, 147 F. (2d) 730 (C. C. A. 7), cert. granted, judgment vacated, case remanded for further consideration 325 U. S. 838, decision on remand, 18 L. R. R. 2092 (decided May 31, 1946).

<sup>5</sup> *Matter of General Cable Corporation*, 68 N. L. R. B. 660 (decided June 17, 1946). The Board has filed a writ for certiorari in the second *Atkins* decision.

<sup>6</sup> See cases cited in footnote No. 3, *supra*.

<sup>7</sup> *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733.

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

Respondent concedes that the practical administration of the Act requires a presumption of continuing majority for a reasonable time<sup>9</sup>

The number of employees have been reduced and they have been demilitarized. Otherwise there has been substantially no change in the unit. So far as the record shows no other union has attempted to represent the category of employees here involved

The undersigned, under the circumstances, finds that the respondent's contention, noted above, is without merit and that the Union will be presumed to have had a majority on May 3, 1945

4. As to the contention that the same Union cannot represent both a unit of patrolmen and production and maintenance employees

The Board on numerous occasions has held that plant protection employees may be represented in a separate unit by the same union that represents the production and maintenance employees<sup>10</sup> To support its position the respondent relies on the decision in the Sixth Circuit Court of Appeals in the *Jones and Laughlin* case The Board has not acquiesced in this case<sup>11</sup>

For the Board to hold that there must be a separation of unions, would require the Board to assume a power, not granted to it under the Act, to impose a limitation upon what representative the employees, in the exercise of the rights guaranteed them by the Act, may choose as their bargaining agent.<sup>12</sup>

The requirement that militarized or deputized plant protection employees' units be established separate and apart from units of employees who are not militarized or deputized has been met in the instant case. On the record, the undersigned is satisfied, and he finds, that this separation has been, and will continue to be, one of fact as well as form.

Under the circumstances, the undersigned accordingly finds that the respondent's contention, noted above, is without merit.

##### 5. General conclusions

On the basis of the foregoing it is concluded and found as follows:

1 That all patrolmen of the respondent at its Johnstown, Pennsylvania, plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants, and the chief clerk and clerks at the patrol headquarters, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2 That the Union on July 26, 1943, and at all times thereafter, was 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.

3. That the respondent on May 3, 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, in respect to rates of pay, wages, hours of

<sup>9</sup> *N. L. R. B. v. Appalachian Electric Power Company*, 140 F (2d) 217 (C. C. A. 4) (The Board, in effect, has held that one year is a reasonable time for a newly certified union to negotiate a contract. *Matter of Kimberly Clark Corporation*, 61 N. L. R. B. 90, and cases cited therein)

<sup>10</sup> *Matter of Wilson and Company, Inc.*, 67 N. L. R. B. 662, and cases cited therein

<sup>11</sup> *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F (2d) 718, cert granted, judgment vacated, case remanded for further consideration, 325 U. S. 838, decision on remand, 154 F (2d) 932 (C. C. A. 6). The Board has filed a writ for certiorari in the second *Jones & Laughlin* case

<sup>12</sup> *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386.

employment and other conditions of employment 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 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 such of them as constitute unfair labor practices 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.

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, the undersigned will 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, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

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

#### CONCLUSIONS OF LAW

1. United Steelworkers 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 patrolmen of the respondent at its Johnstown, Pennsylvania, plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants, and the chief clerk and clerks at the patrol office, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Steelworkers of America, C I O., was at all times material herein and now is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union on or about May 3, 1945, and at all times thereafter as the exclusive representative of the employees in the above described unit the respondent had engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By the above acts, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby 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 recommends that the respondent, Bethlehem Steel Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all patrolmen at the Johnstown, Pennsylvania, plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants and the chief clerk and clerks at the patrol headquarters, with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) In any manner interfering with the efforts of United Steelworkers of America, C. I. O., to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a written signed agreement;

(b) Post at its plant in Johnstown, Pennsylvania, copies of the notice attached hereto and marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by an authorized representative of the respondent, be posted by 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 respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Sixth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply with the foregoing recommendations.

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

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request

therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

WILLIAM J. SCOTT,  
*Trial Examiner.*

Dated September 18, 1946.

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner 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 bargain collectively upon request with United Steelworkers of America, C. I. O., 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 patrolmen at our Johnstown, Pennsylvania, Plant, excluding the chief of patrol, the captain, the lieutenants, the sergeants, and the chief clerk and clerks at the patrol headquarters.

We will not in any manner interfere with the efforts of the above-named union to bargain with us or refuse to bargain with said Union as the exclusive representative of all our employees in the aforesaid described appropriate unit.

BETHLEHEM STEEL COMPANY,

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.