

In the Matter of SAXON STEEL SERVICE, INC. *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 456, AFL *and* INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 455, AFL

*Case No. 2-RM-18.—Decided May 11, 1948*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations named in the Direction of Election claim to represent employees of the Employer.

3. A question of representation exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's plant at Yonkers, New York, including mechanics and laborers, and excluding office employees, chauffeurs, and supervisors as defined by the Act.

5. The determination of representatives.

During the fall of 1947, the Employer was engaged in storing and shipping steel under a contract with a company known as Steel and

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\*Houston, Reynolds, and Gray.

Alloys, Inc. Under that contract, the Employer furnished an outside caterpillar crane and inside overhead crane, with an operator for each. On October 31, 1947, the outside crane became defective, and the employee who had operated it was laid off. A few days later, upon the Employer's refusal to sign a contract with Local 456 or to put the laid-off employee to work on the inside crane, Local 456, formed a picket line around the plant. An employee who had been working as a laborer in the Employer's plant thereupon joined the laid-off employee on the picket line, and the operator of the inside crane quit his employment for reasons not appearing in the record.

In the meantime, the Employer cancelled its contract with Steel and Alloys, Inc., and early in December 1947, began fabricating steel. The Employer hired a welder-mechanic, a burner mechanic, and a laborer to assist the mechanics in steel fabrication. These three employees are currently on the Employer's pay roll.

The only issue is whether the employees presently working, or those previously employed and now on strike, or both, are eligible to vote.

Section 9 (c) (3) of the Act, as amended, now provides that "Employees on strike who are not entitled to reinstatement shall not be eligible to vote." However, we cannot accurately determine at this stage in the proceeding which of the striking employees have been validly replaced and which are still entitled to reinstatement. We have previously held that it is advisable in such circumstances to have an election forthwith, to use a current pay roll, and to permit affected persons to vote under challenge with the proviso that their ballots shall not be counted unless the results of the election make it necessary to do so.<sup>1</sup>

Accordingly, we shall direct an immediate election, permitting all employees to participate who were employed during the pay-roll period immediately preceding the date of this Direction. All persons hired since November 5, 1947, the date of the strike, and all strikers shall be deemed presumptively eligible to vote, subject to challenge.<sup>2</sup> The challenged ballots shall not be counted unless they affect the results of the election, in which event, the question as to which of these ballots shall be opened and counted will await a further investigation concerning the employment status of the affected individuals.

<sup>1</sup> *Matter of The Pipe Machinery Company*, 76 N L R B. 247.

<sup>2</sup> Nothing in this Direction should be construed as indicating that the Board has prejudged in any respect any of the questions which may be drawn into issue by a challenge to the eligibility of certain voters, including such questions as whether (1) a new employee is a permanent replacement, (2) a striking employee has been validly replaced, or (3) any employee's position no longer exists by reason of its permanent discontinuance for economic reasons. *Matter of The Pipe Machinery Company*, 76 N L R B. 247.

## DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, 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 Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, and to our determination in paragraph numbered 5, above, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 456, AFL, or by International Association of Bridge, Structural and Ornamental Iron Workers, Local 455, AFL, or by neither.