

Under the circumstances it is sufficient to say that the issuance of a referral card was meaningless and it strikes the Trial Examiner that Liles was simply attempting to be smart or cagey in insisting that he be granted a card.

The Trial Examiner therefore finds that the Respondents did not threaten Liles with loss of his union membership on or about August 23 and 26 or threaten him with loss of referrals on or about August 23, as alleged in paragraphs 5 (c), (d), and (e) of the complaint.

In view of the findings herein it is unnecessary to discuss the cases cited by the General Counsel, *Union Starch Company*<sup>6</sup> and *Radio Officers*,<sup>7</sup> as supporting his contention that the evidence establishes violations of the Act as alleged in the complaint. Undoubtedly, these cases deal with broad principles involving unfair labor practices directed against individuals on the part of unions as well as employers but the facts therein are readily distinguishable from those found in this matter, so it cannot be said that they may be accepted and applied as controlling authorities in the present case. The Trial Examiner, for the same reasons, finds it unnecessary to pass upon the contention of the Respondents that at least certain acts and conduct on the part of the Union and Hart fall within the terms of the proviso in Section 8 (b) (1) (A), namely, that the proscription shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership. Finally, the Trial Examiner attaches no particular significance to the fact that charges and countercharges were initiated with the Union by Hart and Liles, other than to complete the chronology of events herein.

Upon the basis of the foregoing findings of fact, and upon the entire record, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The operations of American Construction Company occur in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local 450, International Union of Operating Engineers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondents have not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8 (b) (1) (A) of the Act.

[Recommendations omitted from publication.]

<sup>6</sup> *Union Starch & Refining Co. v. N. L. R. B.*, 186 F. 2d 1008 (C. A. 7), cert. denied 342 U. S. 815.

<sup>7</sup> *The Radio Officers' Union of the Commercial Telegraphers Union, AFL v. N. L. R. B.*, 347 U. S. 17.

### **Pacific States Steel Corporation and United Steelworkers of America District 38, CIO, Petitioner. Case No. 20-R-1093. July 18, 1955**

#### SECOND SUPPLEMENTAL DECISION AND ORDER

On August 31, 1944, following a Board-directed election,<sup>1</sup> the Board certified United Steelworkers of America, District 38, C. I. O., herein called the Steelworkers, as the collective-bargaining representative of the Employer's production and maintenance employees, excluding, among others, "employees now represented by" International Union of Operating Engineers, Local 3, A. F. L., herein called the Engineers. On May 9, 1955, the Employer filed with the Board a request for clarification or interpretation of certification, asking the Board to decide whether the certification of the Steelworkers covers three job

<sup>1</sup> 57 NLRB 1084 and 1220.

113 NLRB No. 25.

classifications now claimed by both the Steelworkers and the Engineers. Thereafter, both the Steelworkers and the Engineers filed replies to the Employer's request.

The Board,<sup>2</sup> having considered the Employer's request and the briefs filed by the Steelworkers and the Engineers, makes the following findings:

The present dispute between the Steelworkers and the Engineers involves three classifications of employees: (1) operator of a forklift recently acquired by the Employer; (2) operator of an A-frame truck; and (3) watertender on waste boilers in the open hearth shop. The Steelworkers contends that these classifications are covered both by its certification and by its current contract with the Employer. The Engineers, which has never been certified, claims them under its contract with the Employer, which provides, in part, that the Employer recognizes the Engineers as the sole collective-bargaining agency for all employees performing work coming within its jurisdiction.

In resolving this dispute, we note that the Board, in its original Decision and Direction of Elections herein, excluded from the overall production and maintenance voting group, later found to constitute an appropriate unit, "all employees now represented by the Engineers," on the grounds that this group, described as consisting generally of cranemen and locomotive engineers, constituted an appropriate unit in view of its well-established history of bargaining with the Employer, and that the Steelworkers had made no substantial showing of representation therein. We find nothing in the decision to indicate that the Board intended that classifications of employees falling within the Engineers' jurisdiction but not then employed by the Employer were also to be excluded from the production and maintenance unit. The use of the words "employees now represented by the Engineers" clearly shows a contrary intent.

The Engineers does not contend that any employees in the classifications now in dispute were employed at the time of the Board's decision. In our opinion, therefore, such classifications fall within the Steelworkers' certified unit. The mere fact the Employer, by contract, has recognized the Engineers for all employees performing work coming within its jurisdiction cannot affect the certification.

### ORDER

IT IS HEREBY ORDERED that the Employer's request for clarification of the Board's August 31, 1944, certification be, and it hereby is, granted, and it is found that the forklift operator, the operator of

<sup>2</sup> 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 3-member panel [Members Murdock, Peterson, and Rodgers]

the A-frame truck, and the watertender on the waste heat boilers are included in the production and maintenance unit for which the Steelworkers was certified on August 31, 1944.

MEMBER MURDOCK, dissenting:

In my opinion there exists in this case substantial questions of fact which I would decide only after a hearing. I, therefore, cannot agree that the three job classifications in dispute should be placed summarily in the unit represented by the Steelworkers.

My colleagues apparently base their inclusion of the three classifications in the Steelworkers' unit upon a straight-jacket interpretation of the language contained in the certification of August 31, 1944, whereby "all employees now represented by the Engineers" were excluded from the unit found appropriate. The majority finds "nothing in the decision to indicate that the Board intended that classifications of employees falling within the Engineers' jurisdiction but not then employed by the Employer were also to be excluded from the production and maintenance unit." Their opinion, in addition, states that "The Engineers does not contend that any employee in the classifications now in dispute were employed at the time of the Board's decision." Although there may be some question as to the meaning of this language, I assume that the majority views the word "employees" in the exclusion as equivalent to the term "work classifications" and would not require that only those individuals who were represented by the Engineers in 1944 and have been continuously employed by the Employer since then may be represented by that union now.

The phrase used in the 1944 certification, "employees now represented by the Engineers," in my opinion, encompassed all employees in those work classifications included in the unit represented by the Engineers. Therefore if the job classifications in dispute are merely a refinement or extension of the work assignments previously performed by employees in the work classifications represented by the Engineers, they should, in my judgment, not be included in the Steelworkers' certified unit.

This determination, however, should not be made until the actual facts as to the classifications are ascertained by the Board after a hearing, as the factual allegations of the Employer, Steelworkers, and Engineers are significantly different.

With respect to the operator of the new forklift, the Employer contends that the new equipment does work very similar to the old forklift; the Engineers urges that the new forklift performs the same function and replaces the locomotive boom crane which for years was operated by an operating engineer.

With respect to the A-frame truck, the Employer claims that the equipment has been operated by the regular maintenance crew in-

cluded within the Steelworkers unit. The Engineers states that the A-frame is a hoisting mechanism mounted on a truck just as the boom crane was mounted on the railway equipment.

The Steelworkers maintains that neither the forklift nor the A-frame truck will replace any job now under the jurisdiction of the Engineers.

The watertender is a new job. The Engineers claims that the duties of this employee are the same normally performed by a fireman and are similar to classifications included in its contract. The Steelworkers contends that the waste heat boilers at which the watertender will work are part of the open hearth department and are in line of promotion progression for employees represented by it.

In view of the above I would direct a hearing and then determine on the basis of the facts evolved whether the three classifications in dispute should be included in the unit represented by the Steelworkers.

---

**F. H. Soldwedel Company and Ice Cream and Milk Drivers & Dairy Workers of Pekin, Local No. 53, National Brotherhood of Packinghouse Workers, Petitioner. Case No. 13-RC-4276.**  
*July 18, 1955*

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Julius N. Draznin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

<sup>1</sup> The hearing officer referred to the Board a motion by the Petitioner that Local 462, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL, be denied the status of an Intervenor herein. In its brief filed with the Board, the Petitioner contends that Local 462 should be denied a place on the ballot in any election directed herein because (1) it did not file any written or oral motion to intervene in this case in the manner prescribed by the Board's Rules; and (2) it has not sufficient interest in the representation of the employees involved. While no formal written or oral motion to intervene was made by Local 462, and it, in fact, did not appear at the hearing, although duly notified, the record shows that Local 462 has otherwise adequately manifested its desire to intervene. Thus, before the instant hearing, it entered into a consent-election agreement from which it later withdrew, and the hearing was subsequently postponed by the Regional Director on one occasion at the request of Local 462. Moreover, after the hearing, Local 462 filed a motion with the Board seeking reopening of the hearing "to enable Local 462 to protect its interests as a party to a current collective bargaining contract" with the Employer. With regard to the further question of Local 462's right to intervene, the record indicates that Local 462 relies on its alleged status as a party to the current contract covering the employees involved. This contract, which expired on July 1, 1955, was executed on October 15, 1954, by the Employer and Teamsters' Local 685. About February 1, 1955, Teamsters' International transferred jurisdiction over the instant employees from Local 685 to Local 462. In its motion filed with the Board, Local 462 asserts that as a result of this transfer or "merger" it succeeded to all the rights of Local 685 under its contract. Without determining the validity of this contention, we shall, in view of Local 462's alleged contractual interest and colorable claim to representation, deny Petitioner's motion, accord Local 462 the status of an intervenor herein, and place its name on the ballot. *Pacific Tankers, Inc.*, 81 NLRB 325, 326.