

In the Matter of CRUCIBLE STEEL COMPANY OF AMERICA and STRIP  
STEEL AND WIRE WORKERS UNION, LOCAL NO. 20084, AMERICAN  
FEDERATION OF LABOR

*Cases Nos. R-25 and C-67.—Decided October 29, 1936*

*Iron and Steel Industry—Election Ordered:* controversy concerning representation of employees—rival organizations, refusal by employer to recognize union as bargaining agency; request by substantial number in appropriate unit—question affecting commerce: prior strike caused by employer's refusal to recognize representatives—*Unit Appropriate for Collective Bargaining:* production employees; plant: community of interest; established labor organizations in plant; eligibility for membership in petitioning union—*Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action; surveillance of, questioning regarding organizational activities and meetings; interference with organizational activity; vilifying union and union leaders—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. David A. Moscovitz* for the Board.

*Mr. Raoul Desvernine*, of New York City, for respondent. *Mr. Edward M. Garvey*, of New York City, of counsel.

*Mr. Louis L. Jaffe*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On January 8, 1936, Strip Steel and Wire Workers Union, Local No. 20084, a federal labor union chartered by the American Federation of Labor, hereinafter called the Union, petitioned the Board to investigate and certify representatives of the production employees of the Crucible Steel Company of America, Jersey City, New Jersey, hereinafter called the respondent,<sup>1</sup> at its Spaulding & Jennings Works, Jersey City, hereinafter called the S. & J. Works, pursuant to Section 9 (c) of the Act. The petition stated that "the S. & J. Works Council, a company union", also claims to represent the employees. On February 7, 1936, the Board directed an investigation and hearing. Notice of hearing was served on the respondent, the Works Council and the Union.

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<sup>1</sup> The Crucible Steel Company, though not technically a respondent in the representation case, will for convenience be designated as such in this decision, which deals with both the complaint and representation cases.

On March 9, 1936, the Union filed a charge<sup>2</sup> with the Regional Director for the Second Region against the respondent, charging the respondent with violations of Section 8, subdivisions (1), (3) and (5) of the National Labor Relations Act, approved July 5, 1935, alleged to have taken place at its S. & J. Works. Thereupon a complaint and notice of hearing signed by Elinore M. Herrick, Regional Director for the Second Region, were issued and duly served upon the respondent. The complaint charged respondent with violations of Section 8, subdivisions (1) and (3) of the Act because of the discharge and refusal to reinstate John Lutz and Alva Kocher, for the reason that they joined and assisted the Union and engaged in concerted activities with other employees at the S. & J. Works for the purpose of collective bargaining and other mutual aid and protection; and with violations of Section 8, subdivisions (1) and (5) of the Act because of its refusal to bargain with the Union as the representative of its employees.<sup>3</sup>

The respondent filed a special appearance denying that "its business and its relations with any of its employees or former employees affect interstate commerce", and "that the Board . . . has any jurisdiction in the premises . . . either under the National Labor Relations Act or under any other federal statute". It claimed also that the exercise of jurisdiction violated rights guaranteed to it by the Fifth Amendment to the Constitution of the United States.

A hearing was held in both cases on March 23, 1936, in New York City before Benedict Wolf, the Trial Examiner designated by the Board. It was agreed and stipulated between counsel for the Board and the respondent that the two cases be heard together. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues in both cases was afforded to all parties. Counsel for the respondent announced that he was appearing specially on the jurisdictional question and was not participating on any other question.

On March 27, 1936, pursuant to Section 35 of Article II of National Labor Relations Board Rules and Regulations—Series 1, the Board directed that the proceeding in the complaint case be transferred to and continued before it.

A further hearing was held before the Board in Washington, D. C., on April 2 to April 8, 1936, inclusive, at which time there was introduced into the record on behalf of the Board oral and written evidence tending to lend further support to the findings made by Congress in Section 1 of the Act, and tending to show the need for, and the practicability and reasonableness of, the method adopted by

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<sup>2</sup> This was an amended charge. Three previous charges had been filed.

<sup>3</sup> This charge was struck out at the hearing on motion of the Board's counsel.

the Congress for dealing with the problem. The oral testimony was received from persons generally recognized as experts in their respective fields, who qualified as such before giving testimony; and the written evidence was prepared from authoritative sources. The staff of the Board, under its direction and close supervision, has summarized and rearranged this evidence in the form of a bulletin,<sup>4</sup> which is being issued concurrently with and as a supplement to this decision, and which is hereby made a part hereof as if incorporated herein.

In issuing this bulletin, the Board does so with the realization that the treatment of the various subjects dealt with therein is not inclusive, nor does the Board suppose that because the evidence summarized in the bulletin was received in a hearing held pursuant to Section 10 (b) of the Act, the conclusions stated in the bulletin are conclusive upon the courts as provided in Section 10 (e) of the Act with respect to other findings of the Board. Rather, the Board offers the bulletin for the information and assistance of the courts and for others who may desire to have in convenient form some of the learning which has been gathered during the years in the various fields covered by the witnesses.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of certain of the production employees of the respondent, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations—Series 1, issued a Direction for Election (April 16, 1936)<sup>5</sup> in which it found that said employees constitute a unit appropriate for the purposes of collective bargaining. Merely for the purpose of expediting the election and thus to insure to the employees of the respondent the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

Upon the evidence adduced at the hearing and from the entire record now before it, including the transcript of the hearing and exhibits introduced, the Board, for the purposes of both cases, makes the following:

#### FINDINGS OF FACT

##### I. THE CRUCIBLE STEEL COMPANY OF AMERICA

The respondent is a New Jersey corporation, which together with its wholly-owned subsidiaries—six in number—manufactures and

<sup>4</sup> National Labor Relations Board, Bulletin No. 1, *Governmental Protection of Labor's Right to Organize* (August 1936); United States Government Printing Office.

<sup>5</sup> 1 N. L. R. B. 545

distributes a widely diversified line of steel and pig-iron. In annual steel ingot capacity it was in 1934 the tenth largest producer of steel in the United States. It specializes in high grade steels; the S. & J. Works, for example, is the largest producer of high grade strip and wire specialties in the country.

In a registration statement filed with the Securities and Exchange Commission, the respondent describes itself and its subsidiaries as "a completely integrated unit". The respondent owns iron ore properties in Minnesota, coal mines in Pennsylvania from which it carries coal by its own barges to its various plants, and limestone quarries. The respondent operates eight plants in Pennsylvania, New Jersey and New York, in which it manufactures coke, pig-iron, staple steel forms, and high grade steels. It owns warehouses in Rhode Island, Ohio, Michigan, Illinois and Detroit, and rents other warehouses for the sale and distribution of its products. The respondent has salesmen throughout the country.

The S. & J. Works is run from the central office of the respondent in New York City. It secures its raw materials, e. g., coal and steel, from Pennsylvania through the New York office; it receives its customer orders from that office. The S. & J. Works sends its products to all parts of the United States and to foreign countries, at least 80 per cent of the product going outside of New Jersey. Common carrier railroad sidings run into the plant; on these sidings the respondent's employees load the products into cars for outbound shipment.

The ramifications of the Crucible Steel Company are thus broadly extended over many States. It is impossible to isolate the operations of each of its Works or to consider them as detached, separate—"local"—phenomena. In this and many other respects the respondent shows the characteristics of the steel industry as a whole. This industry had, as of 1934, an investment of \$4,705,976,350. To support its activity 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 13,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. The conception of the industry as a conduit through which materials pass in a continuous stream from mine to consumer, undergoing transformations en route, at the mine, at the mill, at the fabricating plant, until they are delivered to the consumer becomes, for technical and economic reasons, more and more exact.

The steel industry involves enormous movements of materials back and forth across the length and breadth of the nation. Of approximately 25,000,000 tons of ore mined in the United States in 1934, 15,000,000 were mined in Minnesota, 5,000,000 in Michigan, and 2,000,000 in Alabama. These States, on the other hand, accounted

for less than 2,000,000 of the 15,686,442 tons of pig-iron manufactured in that year. In Pennsylvania, Ohio, Illinois and Indiana, producing 11,285,014 tons of pig-iron, only 524,667 tons of ore were mined. Additional iron ore is imported from Cuba and Chile. States producing 9,429,305 tons of pig-iron, 55.7 per cent of the total, import all the coal used by them in the manufacture of coke. Of the approximately 114,000 tons of manganese used in the industry, 95,000 tons are imported from Brazil, India and Russia; the remainder is mined in States of the United States producing little or no pig-iron or steel. A great steel company will, for example, dig out and pick up its materials in one State, carry them to its plant in another, there melt them down and fashion them into shapes, transport them out of its plant, itself initiating the rail shipment—sometimes performing all of a water shipment—, further fabricate them at the conclusion of this shipment in still another State, and then deliver the products to the customer. This vertical integration of the entire process through the medium of a single company is typical of the few giant corporations which control the bulk of the steel production in this country. Two corporations, the United States Steel Corporation and the Bethlehem Steel Corporation, have over 50 per cent of the steel capacity of the country. Add to this eight more companies, among them the respondent, and 91 per cent of the nation's steel capacity is accounted for. This great size is in part an outgrowth of technical forces. It has been estimated that the investment required for the most efficient blast furnace operation is in the neighborhood of \$100,000,000. Vertical integration, a further source of economy, may increase capital requirements. The great capacities thus built up, whatever their causes, require large markets and have molded the steel industry as a whole and in its most important units into a nation-wide system.

The device of the "transit rate" for steel products—"transit rates" on numerous products are permitted by the Interstate Commerce Commission—illustrates in particular that processing and fabrication are simply transformations of materials en route in the stream of commerce. Under the transit rate a steel fabricator which buys steel forms from a steel producer at point A, performs on them certain limited work at point B and then ships the product to point C, receives from the railroads the privilege of the through rate from A to C, point B being considered only as a temporary stopping place where service is performed in transit. The great importance of transportation to the steel industry and of the steel industry to the railroads is shown by the fact that 12 per cent of the railroads' freight is attributable to the activity of the steel industry.

An increasingly large part of this activity does not consist in processing goods in the expectation of future sales but is a direct

response to the customer's order. The steel industry is becoming predominantly a special order business. It has been estimated that the industry must be prepared to produce no less than 100,000 variations of the approximately 500 different kinds of steel products. Though no one plant will meet all these needs, it will seek—particularly where it is large—to fill all the demands possible for a plant of its type; it will be ready to provide variations on its staple products. But to carry sufficient inventories of such varieties becomes an increasing burden. Thus, the customer's order directly initiates particular plant activity and conversely, a breakdown in this activity makes likely stoppage of shipment. This is true of the S. & J. Works, where practically all of the product is manufactured on special order.

The significance of the special order system, and the ramifying effect of stoppage, are made clearer by an inquiry into the uses of basic steel products. Steel, of course, is used to a great extent in operations involving further manufacture and transportation. Recent estimates show that about 20 per cent of all steel products are used by the automobile industry. The railroads take nearly 12 per cent of the steel output. Other important users are food packing—9 per cent; agricultural implements—5 per cent; building and fabrication of materials for building—12 per cent. Furthermore, a large pig-iron and ingot plant will produce semi-finished products to the order of special steel fabricators. The Atha Works of the respondent supplies the S. & J. Works with materials for further fabrication. A stoppage of steel production hinders the progress of and normal operations in these many industries which depend on steel.

The price system of the steel industry emphasizes the close relation between shipment and manufacture of the product. We refer to the famous basing point system of quoting prices. "The essence of the multiple basing point system in the steel industry," says the Federal Trade Commission<sup>6</sup> of the price system now in use, "is to be found in its use of a device of calculation whereby buyers of a commodity located at any given point are charged by the industry a definite uniform price for delivery at that point, regardless of the point of shipment . . ." This system enlarges the market in which many companies can compete, since it neutralizes transportation differentials based on differing distances between the plants of competitors and a given customer. It no doubt assists many of the companies in maintaining their great size, their broad structures of distribution, and their high degree of integration. It reveals fully

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<sup>6</sup> Report of Federal Trade Commission to the President with Respect to the Basin Point System, p. 2, November 1934.

the fact that transportation of the product is not only the final stage of that integration, but one which conditions the extent and nature of the earlier stages. The mining of materials, their transportation to and collection at a certain point, their transformation there into pig-iron, into steel shapes in all stages of finish, their reshipment for further fabrication, for use in railways, automobiles, buildings: all this is one giant, indivisible economic process: it is commerce among the States.

We conclude that the operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States and with foreign countries.

## II. QUESTION AS TO REPRESENTATION

There are about 510 employees in the S. & J. Works; excluding maintenance and clerical workers, about 475. In August, 1933, there was organized in the S. & J. Works, the Works Council, which is a labor organization. The Works Council plan provides for the nomination and election of employee representatives, for regular meetings of those representatives, and for the procedure to be used in settling disputes with the management. All expenses under the plan are borne by the respondent. Representatives under the plan were last elected in July, 1935.

In August, 1935, a group of 12 employees began the organization of the Union. On September 16 the Union, which is a labor organization, received its charter from the American Federation of Labor. Only the production workers in the S. & J. Works are eligible for membership. The Union has received 205 membership applications. Others have indicated their interest in the Union but have been unwilling openly to affiliate with it. On November 30, 1935, five permanent officers were elected. In December, 1935, the Union requested the respondent to meet with it for the purpose of collective bargaining. The respondent replied that it would meet with the representative of its employees and it considered these representatives to have been elected in July of 1935 under the Council Plan.

The Union, whose claim to represent the production employees has thus been denied, contends that the production employees in the S. & J. Works constitute a proper unit for purposes of collective bargaining. The interests of the production workers are distinct from those of the clerical force. Many of the maintenance men, also the engineers, firemen, electricians, etc., have their separate organizations and consider their interests as distinct from the production workers, a point of view which, in this case at least, is shared by the Union. The employees in the S. & J. Works have no contact or no common organization with the employees in any other plant of the respondent.

We conclude that the production employees of the S. & J. Works, including those in the rolling, drawing, slitting, tempering, annealing, trucking, and shipping departments—exclusive of clerical workers, power house workers, engineers, firemen, watchmen, gas producers, and maintenance men—constitute a unit appropriate for the purposes of collective bargaining. We conclude further that a question has arisen as to the representation of the employees in this unit.

### III. THE UNFAIR LABOR PRACTICES

1. *Alva Kocher*. Kocher was employed by the respondent from July, 1933, to the time of his lay-off or discharge on December 6, 1935. He began as a helper in the rolling department and in time was advanced to the job of roller. He complained to Richard Benowitz, the plant superintendent, that his wage was too low. Benowitz agreed that Kocher was entitled to a raise, and just a few weeks prior to the lay-off he was raised from 51 cents to 54 cents per hour. He had never been criticized with respect to his work and immediately prior to the lay-off was doing work requiring special skill. Kocher was active in organizing the Union and this was known to the respondent. He conducted meetings, solicited members and was elected on November 30, 1935, as the first permanent president of the Union. Many of the employees did not speak English. Kocher, who was educated, was of particular assistance to them in organizing and leading them. Benowitz, on October 31, 1935, spoke with Kocher while he was on the job. Benowitz said that he had heard that Kocher was soliciting for the Union and that he wanted an assurance that this was not true. He said that he wanted "to be fair to the men" and wanted them "to be fair with him". He pointed out that Kocher was above the level of intelligence of the men. "I can't understand why you didn't come to see me before you got mixed up in this union," he said. Benowitz stated that he had been in the plant 30 years and no attempt at organization had succeeded: the men had always been "kicked out".

Benowitz had a conversation also with Edward Murphy, who at the time was secretary of the Union, and who in November was elected treasurer. He assured Murphy that his job was safe if he gave up the Union. He said he had been standing on a corner observing the men, who went into the Union meeting hall; that there seemed to be very few; that a strike would likely fail and then "you might lose your job".

On December 6, 1935, one week after his election as president, Kocher was laid off; he was told that work was slack. There were 50 men in his department; he alone was laid off. Six of the 50 had

less seniority than he did, and though seniority was not rigidly observed in lay-offs it was customary to consider it except where the differences in seniority were trifling. If work was slack, it was usual to lay off a helper before a roller and give a roller the job as helper, but that was not done on behalf of Kocher. Furthermore, it would not appear that work was slack. The plant was being run on two shifts five days a week; after Kocher's discharge it was run six days and in some departments seven days a week. William Gross, manager of the plant, testified at the hearing that the plant has been in normal operation since December, 1935. After Kocher's lay-off another man in the department was assigned to run the machine he had been operating. Kocher has twice applied for reemployment and been refused.

2. *John Lutz.* Lutz was employed by the respondent from August, 1933, to the time of his layoff or discharge on December 6, 1935. He was helper in the tempering department and was receiving 40 cents per hour. Lutz applied for membership in the Union on September 6, 1935. He was active in soliciting members, and at Union meetings. At about this time his foreman told him the Union was "a bunch of Communists"; "they will get a couple of dollars together and go out and get drunk on your money." When Lutz expressed sympathy with the Union, he replied, "You don't want to talk like that; keep your eye open and the first chance we get, I will try to put you on the furnace" (which would have meant more money). He was elected sergeant-at-arms of the Union on November 30, 1935. He was laid off on December 6, one week later; he too was told that work was slack. At the same time two others in his department—there were about 40 in all—were laid off, both non-Union men; one had worked three months for the respondent, the other five months. The foreman told these two to remain home a couple of days. And to one he said, "I will let you know in a couple of days." This one was reemployed the following week. Three or four other men with less seniority were kept in preference to Lutz. One man, who had previously worked in the yard gang, was promoted to a job of the type done by Lutz. After his discharge some of the men in his department worked six and seven days a week. Lutz returned the following week for reemployment but again was told that work was slack.

We find that Alva Kocher and John Lutz were laid off and discriminated against with respect to hire and tenure of employment because they joined and assisted the Union. Officers of the respondent made it clear in conversations with both of them that the respondent would not tolerate a Union. This, apparently, was not successful in killing the attempt to organize, and one week after the Union election of officers, the respondent discharged two of them,

one of whom was the leading spirit of the Union. The respondent maintained that work was slack. The evidence shows that this was not so, and even if it were that under the customary practices of the respondent governing lay-offs these men would not have been the ones to go. In two departments having 90 men, three were permanently laid off. Two of them were prominent Union leaders, recently elected as officers, and each was senior to a number of men in his department. Such a coincidence is too striking to be accidental. To discourage labor activity among employees newly organized and very little experienced is for an employer a comparatively simple thing. The discharge of two leaders without more brings a clear and forceful message to men who are acutely aware of their employer's underlying power and the favor upon which they must rely for economic livelihood.

By such discrimination in regard to hire and tenure of employment and terms and conditions of employment, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In the past, disputes relating to the organizational activities of labor have seriously disrupted operations in the steel industry. There was the great steel strike of 1919 in which it is said more than 360,000 employees went out on strike because the steel companies refused to meet any union representatives whatsoever for the purposes of collective bargaining. Judge Gary of the United States Steel Corporation said at that time that it is "the policy of our corporation not to deal with union labor leaders". Coming to more recent times, in 1934, 9,844 men suffered a loss of 264,810 man-days of work with consequent serious injury to industry and commerce. Labor disputes have in the past stopped production at the S. & J. Works and hindered shipments from the plant. We find that the question concerning representation which has here arisen and the aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law in connection with Case No. R-25:

1. Strip Steel and Wire Workers Union, Local No. 20084, American Federation of Labor, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. The Spaulding & Jennings Works Council is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
3. The production employees of the respondent in the Spaulding & Jennings Works, exclusive of clerical, supervisory, power house

workers, engineers, firemen, watchmen, gas producers, and maintenance workers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. A question affecting commerce has arisen concerning the representation of the production employees in the Spaulding & Jennings Works of the respondent, within the meaning of Section 9 (c) of the Act.

On the basis of these conclusions of law, a Direction of Election has already issued, dated April 16, 1936.

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law in connection with Case No. C-67:

1. Strip Steel and Wire Workers Union, Local No. 20084, American Federation of Labor, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its discharge of Alva Kocher and John Lutz, and each of them, for the reason that they and each of them joined and assisted the Union, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharges of the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in the Union, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of said Act.

4. The unfair labor practices in which the respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of said Act.

### ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Crucible Steel Company of America:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing,

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging membership in the Union or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

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

(a) Offer to Alva Kocher and John Lutz employment in the respective positions formerly held by them with all rights and privileges previously enjoyed;

(b) Make whole said Alva Kocher and John Lutz for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period;

(c) Post immediately, for a period of at least thirty (30) days from the date of posting, notices to its employees in conspicuous places in each shop and yard of the S. & J. Works, stating that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, Strip Steel and Wire Workers Union, Local No. 20084, American Federation of Labor, or persons assisting said organization or otherwise engaging in union activity.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Order.

[SAME TITLE]

## AMENDMENT TO ORDER

*March 3, 1937*

The Board, being duly advised in the premises, hereby amends the order issued October 29, 1936 in the above entitled case by striking all of Paragraph 3 (c) and inserting in lieu thereof the following:

“Post immediately notices to its employees in conspicuous places in each shop and yard of the S. & J. Works stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.”