

In the Matter of INTERLAKE IRON CORPORATION and TOLEDO COUNCIL,
COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. R-149.—Decided June 26, 1937

Iron and Steel Industry—Election Ordered: prior collective agreement with rival organization recognizing it as exclusive representative no bar to; controversy concerning representation of employees: rival organizations; substantial doubt as to majority status; refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* hourly rate employees; eligibility for membership in both rival organizations—*Certification of Representatives.*

Mr. Harry L. Lodish for the Board.

Mr. Edward W. Ford, of Chicago, Ill., and *Mr. Leland L. Lord*, of Toledo, Ohio, for the Company.

Mr. Edward Lamb, of Toledo, Ohio, for Toledo Council, Committee for Industrial Organization.

Mr. Arthur E. Reyman, of New York City, for Blast Furnace and Coke Oven Workers' Union Local No. 20572.

Mr. Alexander B. Hawes, of counsel to the Board.

DECISION

STATEMENT OF CASE

On April 29, 1937, Toledo Council, Committee for Industrial Organization, hereafter referred to as the Toledo C. I. O., filed a petition with the Regional Director of the Eighth Region (Cleveland, Ohio), alleging that a question affecting commerce had arisen concerning the representation of employees in the Toledo, Ohio, plant of Interlake Iron Corporation, hereafter referred to as the Company, and requesting the National Labor Relations Board to conduct an investigation and certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449. On May 6, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing. On May 11, 1937, the Regional Director issued a notice of hearing to be held at Toledo, Ohio, on May 20, 1937. Thereafter, the Regional Director, by telegram, notified the parties of the postponement of the hearing to May 21, 1937. Pursuant to notice, a hearing

was held on May 21 and 22, 1937, at Toledo, Ohio, before Emmett P. Delaney, duly designated by the Board as Trial Examiner. The Company, the Toledo C. I. O., and Blast Furnace and Coke Oven Workers' Union Local No. 20572, hereafter referred to as the Blast Furnace Union, were represented by counsel and participated in the hearing.

At the hearing, after the close of the petitioner's case, counsel for the Blast Furnace Union moved to dismiss the proceedings on the grounds (1) that the petitioner was not a real party in interest or authorized to file the petition on behalf of employees of the company, and (2) that there was no proof of the existence of the union for which the petitioner claimed the right of representation. Ruling on this motion was reserved by the Trial Examiner. At the close of the hearing, counsel again moved to dismiss the proceedings on the same grounds and on the additional ground that the dispute involved is an internal dispute within the body of a labor organization, the American Federation of Labor. Ruling was again reserved by the Trial Examiner, and none was thereafter made by him. In support of this motion, the Blast Furnace Union filed a brief with the Board on June 16, 1937. The motion is hereby denied, on all three grounds.

Certain testimony and exhibits were received in evidence over the objections of counsel for the various parties. The Board has reviewed these rulings of the Trial Examiner and finds that no errors were committed. The admission of certain evidence in rebuttal offered by counsel for the Toledo C. I. O. was refused by the Trial Examiner. While such refusal appears to have been erroneous, in view of the conclusion which we have reached the error was not prejudicial.

Upon the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

Interlake Iron Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Chicago, Illinois. It is engaged in the business of manufacturing pig iron, coke, and coal by-products; has manufacturing plants and blast furnaces located in Duluth, Minnesota, Chicago, Illinois, Erie, Pennsylvania, and Toledo, Ohio; and is qualified to do business in Minnesota, Illinois, Pennsylvania, and Ohio.

Its plant at Toledo manufactures pig iron, coke, and coal by-products. The capacity of the plant for the production of pig iron is approximately 340,000 tons per year, and during the past three years

production has been at 80 per cent of capacity. The production force at the plant numbers about 600 men.

Approximately 85 per cent of the raw materials used in manufacture at the Toledo plant, consisting chiefly of iron ore, coal, and limestone, are obtained from outside Ohio. Practically all of the iron ore is obtained in Minnesota, being brought from that State by lake steamer direct to the Company's dock on Lake Erie. The coal used is obtained from West Virginia, Kentucky, and Pennsylvania. About 40 per cent of the products manufactured at the Toledo plant are shipped to customers outside Ohio.

II. ORGANIZATION OF THE COMPANY'S EMPLOYEES

About March 30, 1937, Tim McCormick and others, representing the Toledo Council of the Committee for Industrial Organization, commenced organizing activities among the employees of the Company's Toledo plant. At first, group meetings were held at workers' homes. Then, early in April, open meetings were held. The organizers solicited applications for membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America, hereafter referred to as the Amalgamated, an international union which as a result of its affiliation with the Committee for Industrial Organization stands suspended from the American Federation of Labor. Through McCormick, the applicants for membership made application to the international union for a charter as a local lodge. The charter was issued under date of April 25 or 27, 1937. The lodge thus formed is a labor organization. Membership therein is apparently open, and confined, to the hourly rate employees of the Company's Toledo plant, except supervisory employees, watchmen, and police.

Prior to April 20, 1937, a company union had been in existence in the plant. On or about that date, as a result of the Supreme Court's decisions of April 12, upholding the constitutionality of the National Labor Relations Act, the Company notified the company union it was no longer legal. A meeting of this union on April 20 voted to dissolve and then to organize as a new union and apply to the American Federation of Labor for a charter. Under date of April 23, the American Federation of Labor issued a charter to this organization designating it as Blast Furnace and Coke Oven Workers' Union Local No. 20572, and at this time, or slightly before, a drive for membership in the Blast Furnace Union began. This Union, like the local lodge of the Amalgamated, is a labor organization, in which membership is open and confined to hourly rate employees of the Toledo plant, except supervisory employees, watchmen, and police.

The organization campaigns of the C. I. O. and A. F. of L. unions at the Company's plant had become a matter of public knowledge by

April 23, when the contest was described in Toledo newspapers. Apparently even before this, at latest about April 20, McCormick had begun telephoning the office of the plant manager, Edward Clair, to ask for an appointment to discuss a collective agreement. He was met repeatedly by the statement that Clair was out of town or otherwise unable to see him.

Nevertheless, on April 26 Clair met with a committee of the Blast Furnace Union and an organizer of the American Federation of Labor. He entered into an agreement with them, confirmed by a letter of the same date, recognizing the Blast Furnace Union as the exclusive representative of all the employees in the plant for the purposes of collective bargaining. According to the letter, such recognition was based on the Union's claim, which, the letter stated, appeared to be well founded, that the Union represented a majority of the employees.

On April 28 McCormick and another representative of the Committee for Industrial Organization finally secured an appointment with Clair and presented a proposal for an agreement to be entered into by the company and the Amalgamated Association of Iron, Steel and Tin Workers. The agreement provided that the Company should recognize representatives of that organization as a collective bargaining agency for all the employees of the Company. Clair informed McCormick that he was too late, that the Company had already recognized the Blast Furnace Union as the sole bargaining agency.

The next day the petition in this proceeding was filed.¹

III. THE QUESTION OF REPRESENTATION

Both the Amalgamated local and the Blast Furnace Union claim to have the membership or applications of a majority of the employees. On this ground, among others, the Blast Furnace Union contends that a secret ballot of the employees is unnecessary. On the other hand, while the Amalgamated also claims a majority, it does not seek certification without a poll.

On the basis of the application cards of the unions introduced into evidence, it is impossible to find that either has a majority. The appropriate bargaining unit, as indicated below, appears to consist of all the hourly rate employees, except supervisory employees, watchmen, and police. According to the payroll submitted by the Com-

¹ There was considerable dispute at the hearing as to the relative dates of the conference between McCormack and Clair and of the filing of the petition. The petition is dated April 27, but McCormack insisted that it was filed after the conference, while Clair's secretary insisted the conference was on April 28. It appears likely that both witnesses are correct, and that, though dated and probably prepared April 27, the petition was actually filed April 29, the date of the receiving stamp of the Regional office appearing on it.

pany as of April 30, 1937, for April 16-30, these employees numbered 600. This payroll, however, appears to have excluded all clerical employees, of whom there were, according to oral testimony, about 12. If it is assumed that all such employees were paid on an hourly basis, the unit would consist of 612 employees. The cards submitted by the Blast Furnace Union number 301,² less than a majority of this total. If the clerical employees be eliminated, however, the cards still show less than a majority, for among the 301 are found the cards of eight men not shown on the payroll submitted, presumably because not within the classification set forth. In addition, there are included the cards of two men who appear on the payroll as foremen. If these ten are deducted from the total, the remaining cards, numbering 291, constitute less than a majority of a unit of 600.

In this proceeding it should be noted that the Blast Furnace Union relies on the contract entered into with the Company on April 26 as a bar to an election. But, as indicated above, the Union has not even now a majority among the employees. And at the time the contract was made, it had even fewer members or applicants; of the 301 cards it introduced in evidence, 23 were dated April 26, and 32 subsequently.

The cards of the Amalgamated local likewise fail of a majority. Nevertheless, it appears that 274 employees have made application for membership in that union.³ With the strengths of the two unions, as shown by this evidence, each so close to a majority, it appears that a question of representation has arisen which can best be settled by a secret ballot.

We find that the question of representation which has arisen, in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE BARGAINING UNIT

It appears that membership in both the contending unions is open, and confined, to hourly rate employees at the Company's Toledo plant, except supervisory employees, watchmen, and police. According to oral testimony, both unions admit to membership clerical em-

² In addition to those submitted, the Union claimed that there were in existence about ten cards which had been sent to Washington in applying for the charter. Since these were not produced in evidence we are unable to consider them, or the 45 additional cards claimed by the Toledo C. I. O. to have been sent to Pittsburgh in applying for the charter of the Amalgamated local.

³ Two hundred and seventy-nine cards were submitted in evidence. Four of these cards, however, were signed by employees of Southern Wheel Foundry Co. The name of the employer on the fifth card is illegible, and the name of the applicant does not appear on the payroll submitted by the Company.

ployees who are paid on an hourly rate basis. In the absence of any other evidence, the classification stated appears to be the appropriate bargaining unit. Therefore, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act, we find that all of the hourly rate employees at the Company's Toledo plant, except supervisory employees, watchmen, and police, constitute a unit appropriate for the purposes of collective bargaining.

V. THE MOTION TO DISMISS

A motion to dismiss the proceedings was made by counsel for the Blast Furnace Union on grounds briefly indicated above. It may be well to indicate the reasons why the Board is overruling such motion.

The first ground stated for the motion was that the petitioning Toledo Council of the Committee for Industrial Organization was not the real party in interest. It is true that a petition for investigation and certification of representatives is generally filed by a labor organization which claims to represent the employees involved. But there is nothing in the Act or Board's Rules and Regulations which requires this. Article III, Section 1 of the Rules and Regulations provides that "a petition may be filed by any employee or any person or labor organization on his behalf . . ." Counsel for the Blast Furnace Union further contended that it was not shown that the petitioner was a labor organization or that it was authorized to file the petition on behalf of any of the employees. We think that it is sufficiently clear that the petitioner is a labor organization. As for the authority of the petitioner, it was the organization which sponsored the formation of the Amalgamated local, in which it secured the membership or applications for membership of the 274 employees whose cards have been introduced into evidence. It purports to be acting on behalf of such members. If, in fact, it is not authorized thus to act on their behalf, that is an objection which is for them to raise. There is not the slightest indication of any such objection. So far as procedure under the Act or Rules and Regulations of the Board is concerned, there is, of course, no requirement that the petitioner obtain a formal resolution of either the Amalgamated local or the Toledo Council authorizing the filing of the petition.

The second ground stated for the motion was the alleged absence of proof of the existence of the Amalgamated local. There was evidence of its organization and of its receipt of a charter from the international union, and we therefore cannot take this argument seriously.

Finally, a third ground was stated, that the rivalry between the two unions was an internal dispute within the body of the American Fed-

eration of Labor, in which the Board should not intervene. *Matter of Axton-Fisher Tobacco Company and International Association of Machinists, Local No. 681, and Tobacco Workers' International Union, Local No. 16*, I N. L. R. B. 604; *Matter of Standard Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America*, I N. L. R. B. 614; *Matter of Aluminum Company of America and Aluminum Workers Union No. 19104*, I N. L. R. B. 530. In these cases involving disputes between two or more unions affiliated with the American Federation of Labor or between two groups of officials in the same labor organization, we took the position that we should not intervene, since an existing labor organization possessed the authority to render a decision in the matter.

In the present case, however, although technically both the contending unions may be said to be affiliated with the same organization, the American Federation of Labor, we should be blind, indeed, to facts of common knowledge if we therefore concluded that both unions would submit to the authority of that body. Since the action by the Executive Council of the American Federation of Labor on September 5, 1936, suspending the international unions affiliated with the Committee for Industrial Organization, if not for a long time before, those unions have ceased to obey the orders of the Federation.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. All hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation, except supervisory employees, watchmen, and police, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid unit, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Inter-

lake Iron Corporation, an election by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among all of the hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation on its payroll during the payroll period last preceding such election, except supervisory employees, watchmen, and police, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1611, or by Blast Furnace and Coke Oven Workers' Union Local No. 20572, for the purposes of collective bargaining.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

June 29, 1937

The Board having directed on June 26, 1937 that an election be conducted within 15 days from said date among the hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation on its payroll during the payroll period last preceding such election, except supervisory employees, watchmen, and police, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1611, or by Blast Furnace and Coke Oven Workers' Union Local No. 20572, for the purposes of collective bargaining;

The intervener having moved on June 29, 1937, that said Direction of Election be set aside and that proceedings thereunder be stayed pending the determination of its motion;

And the Board having issued on the same date notice of a hearing for oral argument upon said motion to be held on July 7, 1937, in Washington, D. C., it is hereby

DIRECTED that the holding of the aforesaid election shall be postponed until further direction by the Board.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

July 9, 1937

The Board having directed on June 26, 1937 that an election be conducted within 15 days from said date among the hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation on its payroll during the payroll period last preceding such election,

except supervisory employees, watchmen, and police, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers' of North America, Lodge No. 1611, or by Blast Furnace and Coke Oven Workers' Union Local No. 20572, for the purposes of collective bargaining;

Upon motion of the intervener that said Direction of Election be set aside and that proceedings thereunder be stayed pending the determination of its motion, the holding of the aforesaid election having been postponed on June 29, 1937, until further direction of the Board;

And oral argument by counsel for the intervenor, the petitioner, and the Company upon said motion having been heard by the Board on July 7, 1937, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Interlake Iron Corporation, an election by secret ballot shall be conducted within 15 days from the date of this Amended Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among all of the hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation on its payroll during the payroll period last preceding such election, except supervisory employees, watchmen, and police, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1611, or by Blast Furnace and Coke Oven Workers' Union Local No. 20572, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT OF DECISION

AND

CERTIFICATION OF REPRESENTATIVES

August 4, 1937

On April 29, 1937, Toledo Council, Committee for Industrial Organization, herein called the Toledo C. I. O., filed a petition with the Regional Director of the Eighth Region (Cleveland, Ohio) alleging that a question affecting commerce had arisen concerning the representation of employees in the Toledo, Ohio, plant of Interlake Iron Corporation, herein called the Company, and requesting the National Labor Relations Board to conduct an investigation and certify representatives pursuant to Section 9 (c) of the National

Labor Relations Act, 49 Stat. 449. On May 6, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing. On May 11, 1937, the Regional Director issued a notice of hearing to be held at Toledo, Ohio, on May 20, 1937. Thereafter, the Regional Director, by telegram, notified the parties of the postponement of the hearing to May 21, 1937. Pursuant to notice, a hearing was held on May 21 and 22, 1937, at Toledo, Ohio, before Emmett P. Delaney, duly designated by the Board as Trial Examiner. The Company, the Toledo C. I. O., and Blast Furnace and Coke Oven Workers' Union Local No. 20572, herein called the Blast Furnace Union, were represented by counsel and participated in the hearing.

On June 26, 1937, the Board issued a Decision in which it found that a question affecting commerce had arisen concerning the representation of all the hourly rate employees in the Toledo, Ohio, plant of Interlake Iron Corporation, except supervisory employees, watchmen, and police, and that such employees constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. In its Decision the Board directed that an election be held among such employees to determine whether they desired to be represented by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1611, or by Blast Furnace and Coke Oven Workers' Union Local No. 20572.

Upon motion of the Blast Furnace Union that the Direction of Election be set aside and that proceedings thereunder be stayed pending the determination of its motion, the holding of the election was postponed on June 29, 1937, until further direction. On this motion oral argument by counsel for the Blast Furnace Union, the petitioner, and the Company was heard by the Board on July 7, 1937. On July 9, 1937, an Amended Direction of Election was issued by the Board in the same terms as the original Direction, except for the period within which the election was directed to be held.

Pursuant to the Board's Decision and Amended Direction of Election, an election by secret ballot was conducted on July 20, 1937, by the Regional Director of the Eighth Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. On July 22, 1937, the Regional Director issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot the Regional Director reported :

Total number of employees eligible to vote.....	623
Total number of ballots counted.....	596
Total number of ballots for Blast Furnace and Coke Oven Workers' Union, Local No. 20572.....	343
Total number of ballots for Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No 1611.....	252
Total number of blank ballots.....	0
Total number of void ballots.....	1

Blast Furnace and Coke Oven Workers' Union, Local No. 20572, having been selected by a majority of the hourly rate employees of the Toledo, Ohio, plant of the Company, except supervisory employees, watchmen, and police, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all of such employees, and we will so certify it.

CERTIFICATION OF REPRESENTATIVES

NOW THEREFORE, 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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Blast Furnace and Coke Oven Workers' Union, Local No. 20572 has been selected by a majority of all of the hourly rate employees of the Toledo, Ohio, plant of Interlake Iron Corporation, except supervisory employees, watchmen, and police, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, Blast Furnace and Coke Oven Workers' Union, Local No. 20572 is the exclusive representative of all of such employees of Interlake Iron Corporation for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

AMENDMENT OF DECISION

Since the issuance of the Decision, the Board's attention has been called to the fact that the letter of the Company to the Blast Furnace Union, referred to therein, is not technically a contract, but merely a communication recognizing the union's status as representative of the Company's employees. The wording of the opinion must therefore be changed; with the necessary changes made, however, the conclusion reached appears even less open to dispute.

The Board therefore hereby amends its decision in the above entitled case as follows:

1. In the fourth paragraph of Section II of the Findings of Fact, by striking out the words, "entered into an agreement", and substituting in their place the words, "reached an understanding"; and
2. By striking out the third paragraph of Section III of the Findings of Fact, and substituting in its place the following:

"In this proceeding it should be noted that the Blast Furnace Union relies on the letter of April 26 from the Company as a bar to an election. But, as indicated above, the union has not even now a majority among the employees. And at the time the letter was written it had even fewer members or applicants; of the 301 cards it introduced in evidence, 23 were dated April 26, and 32 subsequently."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment of Decision and Certification of Representatives.