

In the Matter of AMERICAN STEEL & WIRE COMPANY and STEEL AND  
WIRE WORKERS PROTECTIVE ASSOCIATION

*Case No. R-556.—Decided March 8, 1938*

*Steel Products, Wire and Wire Products Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; controversy as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* production and maintenance employees in all plants operated by employer; history of collective bargaining with employer and in industry; similarity in wage scales, hours, and working conditions—*Order:* dismissing Petition for Investigation and Certification of representative of employees in one plant only.

*Mr. Stephen M. Reynolds*, for the Board.

*Mr. Earl K. Cook*, of Waukegan, Ill., for the Protective Association.

*Mr. T. G. Lewis*, of Chicago, Ill., for the S. W. O. C.

*Mr. Lester F. Collins*, of Waukegan, Ill., for the Amalgamated.

*Mr. J. H. Krug*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On June 4, 1937, Steel & Wire Workers Protective Association, herein called the Protective Association, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of American Steel and Wire Company, Waukegan, Illinois, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 12, 1937, the National Labor Relations Board, herein called 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing on due notice.

On September 24, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

the Protective Association, and upon the Steel Workers Organizing Committee, herein called the S. W. O. C., a labor organization claiming to represent employees directly affected by the investigation. On October 2, 1937, Lodge 1115, Amalgamated Association of Iron, Steel and Tin Workers of North America, herein called the Amalgamated, filed with the Regional Director a motion to intervene, and the Regional Director granted the motion.<sup>1</sup> On January 8, 1938, the S. W. O. C. filed a petition to intervene, and the Regional Director granted the petition. The hearing was postponed to January 10, 1938, and notice was given to all parties.<sup>2</sup>

Pursuant to the notice, a hearing was held on January 10, 1938, at Waukegan, Illinois, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board, the Protective Association, the Amalgamated, and the S. W. O. C. were represented by counsel and participated in the hearing.<sup>3</sup> Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the hearing the S. W. O. C. filed a motion to dismiss the petition, which was renewed on February 15, 1938, by a motion filed by the S. W. O. C. and the Amalgamated. This motion also asks that the record be reopened to allow introduction of evidence concerning the making of a new contract by the Company and the S. W. O. C., and concerning the proper bargaining unit. In view of our order in this case, action upon the motion becomes unnecessary.

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<sup>1</sup> On the preceding day, October 1, 1937, the Amalgamated filed with the Regional Director a Motion for Continuance, stating that the Amalgamated had filed with the Board charges that the Company had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) of the Act, and praying that the Board postpone the hearing on the petition filed by the Protective Association, in order to give the Amalgamated an opportunity to present evidence in support of the charges. The records of the Board show that on October 1, 1937, the Amalgamated filed such a charge with the Regional Director for the Thirteenth Region, alleging, among other things, that the Company had sponsored the formation of the Protective Association, dominated and interfered with its administration, contributed financial and other support thereto, and conspired with officials of the Protective Association to intimidate and coerce members of the Amalgamated into joining it. According to the Board records no formal action was taken by the Board on this charge, and on December 11, 1937, at the request of the Amalgamated, the Regional Director approved withdrawal of the charge.

<sup>2</sup> The hearing was originally set for October 4, 1937. It was postponed four times, once by the Regional Director on his own motion, and on the other occasions by the granting of motions for adjournment filed with the Regional Director by counsel for the Amalgamated; the motions were in each instance accompanied by a stipulation whereby counsel for the Protective Association consented to the adjournment. Notice of each adjournment was given to the Protective Association, the Amalgamated, and the Company.

<sup>3</sup> Counsel for the Company was present at the hearing, but stated that the Company did not make an appearance because it did not feel concerned in the controversy.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY <sup>4</sup>

The Company is a New Jersey corporation with its principal office at Cleveland, Ohio. It is a subsidiary of United States Steel Corporation, which owns directly or indirectly all of its voting stock. The Company owns and operates 12 plants for manufacturing steel products, wire and wire products, located in eight States. It owns warehouses in four States; rents warehouse space or service in 13 other States; and owns a forwarding and receiving dock at Cleveland, Ohio. Sales offices are maintained at 26 cities in 17 States and the District of Columbia; in addition, the Company has distributors on the Pacific Coast and in New York City, the latter for export.

The Waukegan plant of the Company, which is the only plant referred to in the petition, manufactures rods, wire and wire products. During the year ending July 31, 1937, raw materials, other than fuel oil, used by the plant totaled 371,181 tons, of which 290,880 tons or 78.4 per cent, were derived from Illinois and 80,301 tons, or 21.6 per cent, from other States; of the oil, 1,118,348 gallons, or 77 per cent, came from Oklahoma and 328,566 gallons, or 23 per cent, from Illinois. In the same period, finished products amounted to 245,966 tons, of which 149,608 tons, or 61 per cent, were shipped to Illinois and 96,358 tons, or 39 per cent, to other States. The product of the Waukegan plant goes to 45 States and the District of Columbia. During the year ending July 31, 1937, the plant employed an average of 1,832 workers, exclusive of supervisory and office employees.

#### II. THE ORGANIZATIONS INVOLVED

Steel and Wire Workers Protective Association, a corporation organized under the laws of Illinois, is a labor organization which apparently admits to membership all production and maintenance employees of the Company, excluding Company officials and persons with the power to hire and discharge.

Steel Workers Organizing Committee is a labor organization authorized to act as the representative, for collective bargaining purposes, of the members of Amalgamated Association of Iron, Steel and Tin Workers of North America.

Lodge 1115, Amalgamated Association of Iron, Steel and Tin Workers of North America is a labor organization, admitting to

<sup>4</sup> Substantially all of the facts in this section are derived from a stipulation entered into between counsel for the Company and counsel for the Board.

membership all production and maintenance employees at the Waukegan plant of the Company, excluding office force and supervisory and clerical employees.

### III. THE APPROPRIATE UNIT

The Protective Association, on May 18, 1937, shortly after its organization, addressed a letter to the Company, claiming to have enrolled as members the majority of all employees at the Waukegan plant, and requesting that the Company recognize the Protective Association as exclusive bargaining representative for all employees at that plant. A week later the superintendent of the Waukegan plant replied by letter, which stated that the Company recognized the Protective Association as bargaining agency for its own members, but refused to grant exclusive bargaining rights on the ground that the Board should determine what labor organization was entitled to such rights.

The Protective Association urges that the employees at the Waukegan plant form an appropriate bargaining unit, while the S. W. O. C. and the Amalgamated claim a unit comprised of employees of the Company at all its 12 plants.

One of the significant considerations influencing the Board in its choice of an appropriate unit is the history of labor relations between the employer and his employees. Prior to 1933, the Company did not engage in collective bargaining. In that year an Employees' Representation Plan was formed; the record does not reveal whether this Plan was confined to the Waukegan plant. In April 1937, shortly after the decisions by the Supreme Court of the United States sustaining the constitutionality of the National Labor Relations Act, the Company posted notices that the Employees' Representation plan was illegal, and it was forthwith abandoned. Upon the information contained in the record, we cannot regard the Employees' Representation Plan as an example of collective bargaining. Collective bargaining made its first appearance on March 17, 1937, when the Company entered into a contract with the S. W. O. C., acting on behalf of members of the Amalgamated Association of Iron, Steel and Tin Workers of North America employed by the Company. By the terms of this contract, which was to remain in force until February 28, 1938, the Company recognized the S. W. O. C. as the collective bargaining agency for those of its members who were employees of the Company, and agreed to maintain specified wages, hours and working conditions. The contract also provided that the parties were to commence negotiations on February 7, 1938, for a new contract.

It appears from the record, therefore, that the Company, when it first bargained collectively, recognized the representatives of its workers upon the basis of an employer unit, as opposed to a plant unit. The contract which it then signed was in effect at the time of the hearing. The management at Waukegan has met with representatives of members of the Amalgamated to adjust grievances according to the procedure outlined in the contract. The Protective Association also, although it has attempted to bargain only upon a plant basis, has recognized the value of a single organization to represent employees of the Company at all its plants. Its charter empowers it to admit to membership employees of the Company, of its subsidiaries, and of other steel corporations. The bylaws contain a similar statement of purpose, although, it is true, other passages in the bylaws seemingly restrict the aims of the organization to the Waukegan plant. The ambiguity thus engendered is largely dissipated by a glance at the scale on which the Protective Association has operated. Although, apparently, the Protective Association has sought to bargain with the Company only at the Waukegan plant, the record indicates that it has attempted to enlist members in all of the Company's plants, and that organizations have actually been formed under the charter and bylaws of the Protective Association in eight of the 12 plants.

In determining an appropriate unit we look not only to the history of collective bargaining with the particular employer, but also to the methods which have been used elsewhere in the same industry. We take judicial notice, therefore, that at the time the Company signed with the S. W. O. C. a number of other subsidiaries of United States Steel Corporation made substantially identical contracts with the same labor organization. These agreements were also on an employer basis.<sup>5</sup>

There is nothing in the record to suggest that a bargaining unit embracing the 12 plants is inappropriate. Despite the wide geographical distribution of its plants, the Company has bargained with the S. W. O. C. upon the basis of an employer unit. Nor does the record reveal differences in the nature of the work performed at the various plants, which, if they existed, might indicate that the interests of the workers were not closely related. Another fact which points to the desirability of the employer unit is the similarity in hours, wages and working conditions in all the plants. In its contract with the S. W. O. C. the Company agreed to specified wages, hours, and working conditions for employees at all its 12 plants.

The S. W. O. C. and the Amalgamated assert that the plant unit requested by the Protective Association is inappropriate, and ask

<sup>5</sup> U. S. Dept. of Labor, *Monthly Labor Review*, May 1937, p. 1237.

that the petition be dismissed. On the record in this case, we are of the opinion that a unit composed solely of employees at the Waukegan plant is not appropriate for purposes of collective bargaining.<sup>6</sup>

#### IV. THE QUESTION CONCERNING REPRESENTATION

The petition in this case, as pointed out in Section III above, relates solely to employees of the Company at its Waukegan plant. We have found in Section III that a unit consisting solely of employees at the Waukegan plant is not appropriate for the purposes of collective bargaining. We find, therefore, that no question has arisen concerning representation of employees of the Company at its Waukegan, Illinois, plant.

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

#### CONCLUSION OF LAW

No question concerning the representation of employees of American Steel and Wire Company, at its Waukegan, Illinois, plant exists within the meaning of Section 9 (c) of the National Labor Relations Act.

#### ORDER

Upon the basis of the foregoing findings of fact and conclusion of law the National Labor Relations Board hereby dismisses the Petition for Investigation and Certification filed by Steel and Wire Workers Protective Association.

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<sup>6</sup> See *Matter of Ohio Foundry Company and International Molders' Union of North America, Local No 218, et al*, 3 N L R B 701; *Matter of Swift and Company and Packing House Workers Union, Local No 563*, 4 N L R. B 779; *Matter of American Woolen Company, Nat'l and Providence Mills and Independent Textile Union of Olneyville*, 5 N. L. R. B. 144.