

In the Matter of SANDUSKY METAL PRODUCTS, INC. and AMERICAN  
FEDERATION OF LABOR

Case No. R-582.—Decided March 16, 1938

*Steel Hardware Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative of its employees; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* all employees except clerical and supervisory employees; no controversy as to definition of unit—*Representatives:* proof of choice: admissibility of cards authorizing union to bargain for employees where no employer is named in card—*Election Ordered:* employees on pay roll for pay-roll period next preceding filing of petition eligible to vote—*Certification of Representatives.*

*Mr. Peter Di Leone*, for the Board.

*Mr. Jesse Gallagher*, of Cleveland, Ohio, for the A. F. of L.

*Mr. Lowell M. Goerlich*, of Toledo, Ohio, for the Amalgamated.

*Mr. Sylvester Garrett*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 5, 1937, American Federation of Labor, herein called the A. F. of L., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Sandusky Metal Products, Inc., Sandusky, Ohio,<sup>1</sup> 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 December 21, 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 upon due notice.

On January 19, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the A. F. of L., and upon Amalgamated Association of Iron, Steel, and

<sup>1</sup> The petition and order directing an investigation and hearing incorrectly designated the Company as "The Sandusky Metal Products Co".

Tin Workers of North America, Union No. 2052, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on January 28, 1938, at Sandusky, Ohio, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board and the Amalgamated were represented by counsel and participated in the hearing. The A. F. of L., represented by its organizer, likewise participated. The Company was not represented. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon 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 except as noted below, finds that no prejudicial errors were committed. With the exception noted below, the rulings are hereby affirmed.

The Trial Examiner sustained an objection by the Amalgamated to the introduction in evidence of certain cards signed by employees of the Company, and authorizing the A. F. of L. to represent them for the purposes of collective bargaining. The ruling was made on the ground that the cards did not specifically designate the Company as employer of the men signing. We find that these cards are relevant and material to the issues presented in this case. The cards are hereby admitted in evidence and made Petitioner's Exhibit No. 2.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Company, an Ohio corporation, is engaged in the manufacture, sale, and distribution of steel houseware products. Its plant is located at Sandusky, Ohio. Its product is sold directly through its own sales force, largely to department and furniture stores. The principal raw materials necessary to the Company's business are steel and paint. Thirty-four per cent of the former commodity, and ninety per cent of the latter, are obtained from sources outside of Ohio. Thirty per cent of the finished product is shipped to customers outside Ohio, and two-thirds of this amount is made to special order. Total sales by the Company during the year 1937 aggregated \$177,745.64.

#### II. THE ORGANIZATIONS INVOLVED

The American Federation of Labor is a labor organization having among its members workers from almost all branches of American industry. Federal Labor Union No. 21183, chartered by the Ameri-

can Federation of Labor, admits to membership all of the production employees of the Company.

Amalgamated Association of Iron, Steel, and Tin Workers of North America, No. 2052, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees of the Company exclusive of the superintendent, foreman, and salaried employees.

### III. THE QUESTION CONCERNING REPRESENTATION

Following a strike in the early part of August, the Company on August 12, 1937, entered into a contract with the Amalgamated. According to its terms the Amalgamated was recognized as the sole bargaining agent for the employees of the Company, excluding the superintendent, the foreman, and salaried employees. That at this time a majority of the employees within the unit described in the contract had selected the Amalgamated to represent them for purposes of collective bargaining is unquestioned. The contract thus entered into was by its terms to remain operative until the end of the first pay period in April 1938. In view of its imminent expiration, we do not regard it as affecting our determination of the issues in this case.

Shortly after the settlement of the strike, organization activities by the A. F. of L. among the Company's employees were commenced. This apparently was the result of a request made to the A. F. of L. by some of the Company's employees during the August strike. In any event, by August 19, the A. F. of L.'s organization campaign was well under way. About October 1, 1937, a representative of the A. F. of L. requested the president of the Company to recognize the A. F. of L. for purposes of collective bargaining with its production employees. At that time the assertion was made that the A. F. of L. represented a majority of the employees involved. The Company, however, refused to enter into negotiations with the A. F. of L. because of the preexisting contract granting recognition to the Amalgamated as the exclusive bargaining agency. On October 5, 1937, the A. F. of L. filed its petition requesting the investigation and certification of representatives. At the hearing, the Amalgamated attempted to introduce evidence that the impetus behind this sudden organizational activity was provided in part by the Company. In spite of this, however, the Amalgamated at no time has filed any charge with the Board that the Company has interfered with the rights guaranteed to its employees by the Act. Counsel for the Amalgamated was carefully reminded by the Trial Examiner that the filing of such a charge was the proper manner to raise issues of this nature in a case like the present one. In the

absence of any such charge, therefore, the Board will not in this case consider evidence bearing upon such a collateral issue.

We find that a question has arisen concerning representation of employees of the Company.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring 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.

#### V. THE APPROPRIATE UNIT

Although the petition is not clear in its description of the unit claimed to be appropriate, the A. F. of L. clarified its position at the hearing by claiming that such unit should include all employees of the Company, excluding supervisory and clerical employees. The Amalgamated agreed that such a unit was proper. The Amalgamated, however, contended that employees Reuman, Bennett, Crapsey, and Hart performed such supervisory duties that they should be excluded from the unit. The A. F. of L. desired inclusion of these employees.

Reuman is clearly a foreman in charge of operations on the second floor of the Company's plant. His duties include giving orders, checking up on the operation of the machinery, and seeing that the workers properly carry out their duties. Whenever he detects derelictions of duty by employees, he brings them to the immediate attention of the plant superintendent. Bennett, while not a foreman, is designated as a "lead man." He is in charge of a group of employees, gives them orders, and instructs them in the operation of various machines. It is also his duty to see that the men are carrying out their tasks properly. Among other things, he reports to the plant superintendent cases of loafing among the workers who are under his direction. It appears that Crapsey handles all shipments by the Company. He has an office of his own, and gives orders to four employees under his direction. He testified at the hearing, that although he told these four men what to do, and how to put the orders out, he was simply repeating instructions given him by the plant superintendent. He further stated that in case the men did not do their work properly, he never called this to the attention of the superintendent but took all responsibility himself. This contrasts markedly with his statement that he had no power to recommend hiring or discharging of employees. As to Hart, there is very little evidence in the record which could be said to show that he was a

supervisory employee. The evidence indicates that he is a machinist who has a single assistant under him.

In view of all of the evidence we conclude that Reuman, Bennett, and Crapsey perform such duties that they should be excluded from the unit, as supervisory employees. We conclude, however, that Hart should be included in the unit.

We find, therefore, that all the employees of the Company excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that the said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

As noted above, no objection was raised at the hearing to the Amalgamated's claim that on August 12, 1937, it represented a majority of the employees within the appropriate unit. The Amalgamated claims that the majority of such employees still desire representation by it. On the other hand, the A. F. of L. contends that a majority of the employees have signed cards authorizing it to represent them. Although the Trial Examiner admitted such cards only for the purpose of identification, we have already ruled that they are admissible in evidence. The Amalgamated claims, nonetheless, that a considerable number of employees signing the cards of the A. F. of L. in fact still desire representation by the Amalgamated. It claims further that the Company officials have indirectly aided the A. F. of L. in its organization activities, and thus its authorization cards do not truly represent the wishes of the employees.

We are of the opinion that under all the circumstances, the question which has arisen concerning representation can best be settled by the holding of an election by secret ballot.

There was some dispute at the hearing as to which pay roll would be appropriate to determine eligibility to vote in case it should become necessary to hold an election to determine the employees' choice of representatives. The A. F. of L. favored the pay roll of January 28, 1938, which was the date of the hearing. The Amalgamated, however, argued in favor of the pay roll of August 25, 1937, which was the pay roll immediately after its contract was negotiated with the Company. Its argument was based on a statement that the Company had favored the A. F. of L. in the new hirings since the August strike. The Amalgamated, however, has filed no charge in this connection and there is no evidence on the point upon which the Board properly could rely. Under all the circumstances we feel that those eligible to vote should be the employees in the appropriate unit employed during the pay-roll period next preceding October 5, 1937,

the date of the filing of the petition, exclusive of those who have since quit or been discharged for cause.

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Sandusky Metal Products, Inc., Sandusky, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Company, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) 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 Sandusky Metal Products, Inc., Sandusky, Ohio, an election by secret ballot shall be conducted within fifteen (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 the employees of Sandusky Metal Products, Inc., at its plant in Sandusky, Ohio, who were employed by the Company during the pay-roll period next preceding October 5, 1937, excluding supervisory and clerical employees and those who have since quit or been discharged for cause, to determine whether they desire to be represented by American Federation of Labor, or by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Union No. 2052, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

#### CERTIFICATION OF REPRESENTATIVES

*April 12, 1938*

On March 16, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in

the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio) among all employees of Sandusky Metal Products, Inc., Sandusky, Ohio who appeared on the pay-roll list for the pay-roll period next preceding October 5, 1937, excluding supervisory and clerical employees and those who had since quit or been discharged for cause.

Pursuant to said Direction of Election, the said Regional Director conducted an election by secret ballot on March 28, 1938. On March 29, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote.....	33
Total number of ballots cast.....	33
Total number of votes cast in favor of American Federation of Labor.....	28
Total number of votes cast in favor of Amalgamated Association of Iron, Steel, and Tin Workers of North America, Union No. 2052.....	5
Total number of votes in favor of neither organization.....	0
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged ballots.....	0

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that American Federation of Labor has been designated and selected by a majority of the employees of Sandusky Metal Products, Inc., Sandusky, Ohio, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, American Federation of Labor is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.