

In the Matter of DES MOINES STEEL COMPANY and LODGE 2071, AMALGAMATED ASSOCIATION OF IRON, STEEL & TIN WORKERS OF NORTH AMERICA, THROUGH STEEL WORKERS ORGANIZING COMMITTEE, AFFILIATED WITH C. I. O.

*Case No. R-637.—Decided April 8, 1938*

*Steel Products Manufacturing Industry—Investigation of Representatives:* employees, members of one union, join second union; each union claims exclusive representation; third union claims jurisdiction of two truck drivers—*Unit Appropriate for Collective Bargaining:* hourly paid production and maintenance employees, including truck drivers, of one employer; no desire of majority of truck drivers to bargain apart from other hourly paid production and maintenance employees; history of collective bargaining relations with employer—*Representatives:* proof of choice: membership application cards—*Certification of Representatives:* upon proof of majority representation.

*Mr. Lee Loevinger*, for the Board.

*Mr. John L. Brownlee*, of Chicago, Ill., for the Amalgamated.

*Mr. John Connolly, Jr.*, *Mr. Ralph D. Moore*, and *Mr. Clyde B. Judkins*, of Des Moines, Iowa, for the International.

*Mr. John Connolly, Jr.*, of Des Moines, Iowa, for the I. B. T.

*Mr. Abraham J. Harris*, of counsel to the Board.

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

### STATEMENT OF THE CASE

On January 29, 1938, Lodge 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O., herein called the Amalgamated, filed with the Regional Director of the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Des Moines Steel Company, Des Moines, Iowa, 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 February 25, 1938, 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 February 28, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Amalgamated, and upon the International Association of Bridge, Structural, and Ornamental Iron Workers, Local No. 493, herein called the International, a labor organization claiming to represent employees directly affected by the investigation. On March 1, 1938, the Amalgamated filed an amended petition. On the same day, the Regional Director issued an amended notice of hearing, copies of which were duly served upon those upon whom the original notice of hearing had been served. Pursuant to the amended notice, a hearing was held on March 8 and 9, 1938, at Des Moines, Iowa, before Conn Cohalan, the Trial Examiner duly designated by the Board. At the hearing, the International was granted leave to intervene without objection. The International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, Local No. 90, herein called the I. B. T., a labor organization claiming to represent employees directly affected by the investigation, was granted leave to intervene over the objection of the Amalgamated. The Board, the International, and the I. B. T. were represented by counsel. The Amalgamated was represented by a duly authorized representative. The International was represented by a duly authorized representative as well as by counsel. All participated in the hearing. 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.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

Des Moines Steel Company is a corporation engaged, for the most part, in the fabrication and sale of structural steel shapes, rods, bolts, rivets, and similar products used in connection with the construction of buildings, bridges, and other structures. The Company also sells other products used in connection with the construction business. All operations are carried on at one plant, at Des Moines, Iowa. The principal raw material used by the Company is rolled steel, all of which is obtained outside the State of Iowa, but a small portion of all the raw materials used being obtained within the State of Iowa.

Approximately 30 per cent of the Company's products are shipped to States other than Iowa.

The Company's sales in 1937 aggregated approximately \$1,500,000. The gross tonnage of steel fabricated by it in the same period was approximately 8,000.

## II. THE ORGANIZATIONS INVOLVED

Lodge No. 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, affiliated with the Committee for Industrial Organization, is a labor organization admitting to its membership all hourly paid production and maintenance employees of the Company, excluding clerical and office workers.

International Association of Bridge, Structural, and Ornamental Iron Workers, Local No. 493, is a labor organization affiliated with the American Federation of Labor, admitting to its membership those employees of the Company who are eligible to membership in the Amalgamated as well as similar employees of two other steel fabricating plants in Des Moines.

International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers, Local No. 90, is a labor organization affiliated with the American Federation of Labor, admitting to its membership the truck drivers employed by the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On April 30, 1937, the International entered into a contract with the Company covering the wages, hours, and working conditions of the Company's employees eligible to membership. By the terms of the contract, it was to remain effective "unless notice is given in writing by either party 90 days prior to April 1st of any year." All the Company's eligible employees either were at the time of the execution of the contract or shortly thereafter became members of the International. Some of these paid dues up to December 20, 1937. None of them paid dues thereafter. On December 28, 1937, a number of the Company's employees asked representatives of the Committee for Industrial Organization whether they could get a charter. Upon receiving an affirmative answer, a meeting was held which resulted in the signing of application cards for membership in the Steel Workers Organizing Committee by 60 employees. On December 29, 1937, a charter was applied for. Those who signed such cards thereupon notified the Company that they intended to ask for a contract, as members of the new union with which they were affiliated, upon the expiration of the existing contract. Accordingly, the Company, 90 days prior to April 1, 1938, gave written notice to the International relative to the termination of their contract on that date. On March

7, 1938, 50 of those who had signed Steel Workers Organizing Committee membership application cards, signed cards requesting and accepting membership in the Amalgamated. In addition, such cards were signed by seven employees who had not previously signed cards.

The International claims as members all 89 of the hourly paid production and maintenance employees, excluding clerical and office workers, carried on the Company's pay roll.

The I. B. T. claims jurisdiction of the two truck drivers employed by the Company.

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

The Amalgamated claims that the hourly paid production and maintenance employees of the Company, excluding clerical and office workers, constitute a unit appropriate for the purposes of collective bargaining. There is no dispute as to the appropriateness of such a unit, except that the International claims that the appropriate unit consists not only of these employees but also of similar employees of two other steel fabricating plants located in Des Moines and except that the I. B. T. claims that the two truck drivers employed by the Company belong in a unit by themselves.

The history of the collective bargaining activities of the Company's employees shows that prior to the time they joined the International they had bargained collectively as a unit with the Company as members of an unaffiliated union admitting to its membership only employees of the Company. When the International was formed, it took in as members of one local not only all the Company's employees but also similar employees of two other steel fabricating plants in Des Moines. Separate contracts, however, were entered into by the International with the three steel plants. There is no common ownership or management of the three steel plants and there is no relationship among them whatsoever, except that each is a competitor of the others. The International contends that competitive conditions in the business require that the same union bargain

with all three employers, and that for this reason a three-employer unit is necessary. We find that a unit composed exclusively of the Company's employees will best guarantee to them the full benefit of their right to self-organization and to collective bargaining.

As to the claim of the I. B. T. that the truck drivers belong in a unit of their own, the history of collective bargaining activities of the Company's employees shows that the truck drivers were eligible to membership in the union which had bargained with the Company as a unit prior to the organization of the International and that they later became members of the International and were specifically included by the International in its contract with the Company. One of them, on December 29, 1937, signed a Steel Workers Organizing Committee membership application card and, on March 7, 1938, reaffirmed his choice of a new collective bargaining representative by signing an Amalgamated membership application card. The other truck driver signed a Steel Workers Organizing Committee application card on December 28, 1937, and an I. B. T. membership application on February 2, 1938. Only the latter truck driver is claimed by the I. B. T. as a member; the former's membership in the Amalgamated is conceded. We find, therefore, that a majority of the truck drivers do not desire to bargain apart from the other hourly paid production and maintenance employees of the Company. Accordingly, we find that the truck drivers employed by the Company should be included in the bargaining unit with the other production and maintenance employees.<sup>1</sup>

We find that the hourly paid production and maintenance employees of the Company, including the truck drivers and excluding clerical and office workers, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to such employees 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

At the hearing there was put into evidence the pay-roll list of the Company, covering all the employees in the appropriate unit who had worked for the Company since April 30, 1937. The list contains the names of 91 employees. Of these, it was agreed at the hearing that two were improperly included in the list for the reason that they had quit their employment and are no longer considered employees of the Company. Of the remaining 89 employees listed,

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<sup>1</sup> See *Matter of The Globe Machine and Stamping Co and Metal Polishers Union, Local No. 3, International Association of Machinists, District No 54, Federal Labor Union 18788, and United Automobile Workers of America*, 3 N. L. R. B. 294

21 had been laid off at various dates between May 7, 1937, and January 27, 1938, but are still considered employees of the Company.

The Amalgamated introduced membership application cards of a majority<sup>2</sup> of those appearing on the Company's pay roll. The cards were all dated December 28, 1937, or subsequent thereto. All but two of them were the cards of employees of the Company working at the time of the hearing. The authenticity and genuineness of the cards were not questioned. Evidence was also introduced showing that at least 55 of the Amalgamated members had paid their dues in the Amalgamated to date. The International introduced no such proof of membership. An International representative merely testified that all those listed on the Company's pay roll had joined the International in the spring of 1937, and were still members thereof. It does not appear that any formal steps were taken by those employees joining the Amalgamated to renounce their membership in the International. However, the cessation of dues payment in the International on December 20, 1937, and the applications for membership in the Amalgamated made on December 28 and subsequently clearly indicate that the majority of the employees in the appropriate unit desire the Amalgamated as their representative for the purposes of collective bargaining.

We find that the Amalgamated has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining, and we will so certify.

On 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 Des Moines Steel Company, Des Moines, Iowa, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The hourly paid production and maintenance employees of the Company, including truck drivers and excluding clerical and office workers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Lodge No. 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the National Labor Relations Act.

<sup>2</sup> See Section III, *supra*.

## CERTIFICATION OF REPRESENTATIVES

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 Lodge No. 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the hourly paid production and maintenance employees of Des Moines Steel Company, Des Moines, Iowa, including truck drivers and excluding clerical and office workers, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Lodge No. 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, 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.