

In the Matter of INTERLAKE IRON CORPORATION *and* AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS OF NORTH AMERICA, LOCAL No. 1657

Case No. R-316.—Decided April 23, 1938

Iron and Steel Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* hourly rate employees and heaters on monthly rate, excluding supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first-aid men, bus operators, and laboratory samplers and chemists—*Representatives:* proof of choice: election—*Certification of Representatives:* upon proof of majority representation as determined by results of election.

Mr. Jack G. Evans, for the Board.

Pope and Ballard, by *Mr. Edward W. Ford* and *Mr. Henry E. Seyfarth*, of Chicago, Ill., for the Company.

Mr. Thurlow G. Lewis, of Chicago, Ill., for the Amalgamated.

Mr. John F. Cusack and *Mr. Robert Irmigér*, of Chicago, Ill., for the Employees Association.

Mr. Lester Asher, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 24, 1937, Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, herein called the Amalgamated, 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 Interlake Iron Corporation, Chicago, 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 September 9, 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 September 17, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Amalgamated, and upon Employees Association of Interlake Iron Corporation, herein called the Employees Association, a labor organization purporting to represent employees directly affected by the investigation. On September 23, 1937, the Amalgamated filed an amended petition. Pursuant to the notice, a hearing was held on September 24 and 25, 1937, at Chicago, Illinois, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. At the commencement of the hearing the Employees Association moved for leave to intervene and to be made a party to the proceeding. The motions were granted by the Trial Examiner. The Board, the Company, the Amalgamated, and the Employees Association were represented by counsel and 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. The Trial Examiner reserved ruling upon a motion of the Employees Association to strike out testimony introduced by the Amalgamated relating to the types of operations and duties which distinguish the production and non-production activities of the Company. As his reason for objecting to this testimony counsel for the Employees Association urged that the unit appropriate for the purposes of collective bargaining must in each case include all the employees of an employer, excluding supervisors. This argument displays a fundamental misconception of the factors involved in the determination of the appropriate unit. The motion to strike is hereby denied.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of said Rules and Regulations—Series 1, as amended, issued a Direction of Election¹ on November 9, 1937, in which it found that the employees paid on an hourly rate and the heaters paid on a monthly rate employed by the Company at its Chicago, Illinois, plant, excluding supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first-aid men, bus operators, and laboratory samplers and chemists, consti-

¹ 4 N. L. R. B. 55.

tuted a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thus insuring to the employees of the Company 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.

On November 20, 1937, the Board amended the Direction of Election by striking therefrom the name of the Amalgamated, and substituting therefor the name, Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, affiliated with the C. I. O., herein called the S. W. O. C.,² and on November 23, 1937, and on December 7, 1937, the Board further amended the Direction of Election to extend the period within which the election was to be held.³

On November 18, 1937, the S. W. O. C. and the Amalgamated filed with the Board a joint motion requesting that the Direction of Election be amended by striking therefrom the words "or by neither" appearing in the last line of said Direction of Election, and on November 23, 1937, the Employees Association joined therein. On November 22, 1937, the Employees Association filed its petition to amend the Direction of Election by adding certain additional classes of employees to those eligible to vote at the election and also requested an opportunity to submit further evidence relating to these employees. On December 4, 1937, the S. W. O. C. filed objections to the granting of the requests of the Employees Association. By its Supplement to Direction of Election,⁴ issued on December 28, 1937, the Board, after careful consideration of the problems presented, denied the motions of both organizations.

Pursuant to the Direction of Election and the amendments and supplements thereto, an election by secret ballot was conducted on January 7, 1938, by the Regional Director for the Thirteenth Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. Full opportunity was accorded all parties to this proceeding to participate in the conduct of the ballot and to make challenges. On January 11, 1938, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to the proceeding.

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

Total number eligible.....	865
Total number of ballots cast.....	754
Ballots cast for Employees Association of Interlake Iron Corporation	437

² 4 N. L. R. B. 56

³ 4 N. L. R. B. 57.

⁴ 4 N. L. R. B. 58.

Ballots cast for Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, affiliated with the C. I. O.	280
Ballots cast by employees desiring neither organization	19
Challenged ballots	14
Blank ballots cast	0
Ballots spoiled or void	4

In his Intermediate Report the Regional Director certified that the secret ballot was fairly and impartially conducted. He nevertheless called to the attention of the Board the unseemly conduct of John F. Cusack, attorney for the Employees Association, on the day of the election. In substance, the Intermediate Report alleged that Cusack had repeatedly entered the neutral zone which was set up 500 feet around the polling place and was restricted to eligible voters; had attempted to be photographed within the polls; had failed to leave the restricted area except after prolonged discussions; and that the foregoing and other activities constituted a deliberate interference with the Board's agents in their conduct of the election.

On January 15, 1938, Cusack filed his "answer" to the Intermediate Report for the purpose of refuting some of the statements made therein.

On January 16, 1938, the Amalgamated and the S. W. O. C. filed objections to the Intermediate Report alleging that the fair and impartial conduct of the ballot had been interfered with by the activities of Cusack, the Company, and the Employees Association. On January 18, 1938, and on January 21, 1938, the Employees Association and the Company, respectively, filed answers to these objections.

Acting pursuant to Article III, Section 9, of the Rules and Regulations, the Regional Director found that the objections raised a substantial and material issue with respect to the conduct of the ballot, and on February 10, 1938, he issued a notice of hearing and on February 17, 1938, a notice of continuance of hearing, copies of both of which were duly served upon the Company, upon the S. W. O. C., and upon the Employees Association.

Pursuant to the notices, a hearing on said objections was held on March 7 and 8, 1938, at Chicago, Illinois, before Herbert Wenzel, the Trial Examiner duly designated by the Board. The Board, the Company, and the Employees Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the objections was afforded all parties. On motion of counsel for the Company, in which counsel for the Board joined, certain of the objections alleging interference on the part of the Company were dismissed. During the course of this 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.

Pursuant to notice, a hearing was held before the full Board on April 14, 1938, in Washington, for the purpose of oral argument upon the Intermediate Report and the objections thereto. The Company, the S. W. O. C., and the Employees Association participated therein.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

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 byproducts; has manufacturing plants and blast furnaces located in Duluth, Minnesota, Erie, Pennsylvania, Toledo, Ohio, and Chicago, Illinois; and is qualified to do business in Minnesota, Pennsylvania, Ohio, and Illinois.

Practically all of the raw materials used in manufacture at the Chicago plant, consisting chiefly of iron ore, coal, and limestone, are obtained from outside Illinois. From 600,000 to 700,000 tons of iron ore are received at the Chicago plant each year, being obtained almost entirely in Minnesota, and transported by lake steamer to the Company's dock on Lake Michigan. The coal used is obtained from Virginia, West Virginia, Kentucky, and Pennsylvania, approximately 1,000,000 tons being received annually. About two-thirds of the limestone used by the Company comes from Michigan. The total product of the Chicago plant per year amounts to 350,000 tons of pig iron, 700,000 tons of coke, and large amounts of gas, tar, light oil, and ammonia. About 35 per cent of the pig iron and 25 per cent of the coke are shipped to customers outside of Illinois, and the light oil and the ammonia are also sold throughout the country.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, is a labor organization affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, admitting to membership all hourly rate employees of the Company's Chicago plant, excluding supervisory, clerical, cafeteria, and laboratory employees, patrolmen, watchmen, gatemen, and first-aid men.

Employees Association of Interlake Iron Corporation is a labor organization without outside affiliation, and was incorporated on May 13, 1937. It admits to membership all employees of the Company, except employees in supervisory capacities.

III. THE QUESTION CONCERNING REPRESENTATION

On May 25, 1937, the Company posted notices to its employees stating that the Employees Association had presented to the management a request for recognition as the sole bargaining agency for all the employees of the Company. The notice concluded with the statement that the Company had agreed to recognize the Employees Association as the representative of its members and had asked for a reasonable time in which to consider the request to bargain for all employees. On June 13, 1937, the Company posted similar notices with regard to the Amalgamated. A committee from the Amalgamated met with the Company's plant manager on June 16 and June 23, 1937, but the demand which the Amalgamated made for recognition as the exclusive bargaining representative was refused.

At the hearing it was agreed that each organization claimed to represent a majority of the employees constituting the appropriate unit and that the Company had refused to grant exclusive recognition to either.

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 in its amended petition for an investigation and certification of representatives claimed that all hourly rate employees of the Company, "excluding superintendents, foremen, office employees, clerks, stenographers, watchmen, and all supervisors", constituted a unit appropriate for the purposes of collective bargaining. During the hearing the Amalgamated clarified its position by contending that patrolmen, gatemen, and first-aid men should be excluded from the unit, since their duties are similar to those of watchmen.

The Employees Association, as we have noted above, contended that under the provisions of the Act every employee of the Company who is not in a supervisory capacity must be included within the appropriate unit. The testimony offered by the Employees Association was in the main related only to the factor of supervisory powers, and no attempt was made to refute the evidence of the Amalgamated concerning differences in work, wages, skill, and working conditions between various classes of non-supervisory employees. The numerous decisions of the Board with respect to the determination of the appropriate unit indicate clearly that a great many factors in addition to the question of supervision must be taken into consideration.

The record, therefore, contains the uncontradicted testimony submitted by the Amalgamated that the monthly salaried employees (stenographers, weighmasters, draftsmen, timekeepers and timekeeping-machine operators, clerks, telephone operators, and cashier) are not required to punch a time clock, for the most part perform clerical tasks, and are subject to working conditions different from the hourly rate employees. With reference to the employees on an hourly rate, the Amalgamated adduced proof that the cafeteria manager, patrolmen, watchmen, gatemen, and first-aid men are distinguished in the nature of their work and interests from the workers engaged in actual production activities; that the bus operator acts as a messenger and clerical employee; and that the laboratory samplers and chemists perform technical duties which require different standards of skill and training. In view of the uncontroverted evidence, we find these exclusions from the bargaining unit to be satisfactory. We do not exclude from the appropriate unit one heater who is carried on the monthly pay roll because of his record of 30 years' employment with the Company, since he performs the same duties as heaters paid at an hourly rate.

We find that the employees paid on an hourly rate and the heaters paid on a monthly rate employed by the Company at its Chicago, Illinois, plant, excluding all supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first-aid men, bus operators, and laboratory samplers and chemists, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to 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

Although at the hearing the Amalgamated and the Employees Association each made claims that it represented a majority of the

employees, no evidence was introduced upon the basis of which we could find that a majority of the employees in the appropriate unit had designated and selected a representative for the purposes of collective bargaining.

We concluded, therefore, that an election by secret ballot was necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation, and we issued the Direction of Election accordingly. We directed that the employees in the appropriate unit who were on the Company's pay roll on June 24, 1937, the date on which the petition was filed, should be eligible to vote in the election. The results of the election, set forth above, show that a majority of the employees within the appropriate unit have designated and selected the Employees Association as their representative for the purposes of collective bargaining.

VII. THE CONDUCT OF THE SECRET BALLOT

The evidence adduced at the hearing on the objections to the Intermediate Report affords insufficient basis upon which to sustain the allegation that the Company interfered with the election. We find that there were no activities on the part of the Company which created any impediment to the fair conduct of the secret ballot. We also find that the activities of the officers and members of the Employees Association did not interfere with the fair conduct of the election.

The actions of Cusack, on the other hand, were characterized by a disrespect for the agents of the Board in the performance of their duties and by other unprofessional conduct. The balloting was conducted subject to the constant scrutiny of tellers representing both organizations. As a means of safeguarding against solicitation and electioneering, the 500-foot neutral area was established and was restricted to eligible voters going to or coming from the polling place, and election officials. Cusack at no time disputed the reasonableness of this restriction and was aware of its existence at the commencement of the secret ballot. There is no evidence that he engaged in any electioneering, but he nevertheless repeatedly entered the restricted zone. Particularly since he was an attorney and the counsel for one of the interested parties, his demeanor on several occasions during the course of the election was objectionable and did not set an example conducive to maintaining a proper decorum at the polls.

However, we have not found conduct of this sort by an agent for a labor organization occurring in other cases, and we believe the situation here to be unique. It is our opinion that such conduct will not occur again and we do not feel that the election results should be upset.

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 Interlake Iron Corporation, Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees paid on an hourly rate and the heaters paid on a monthly rate employed by the Company at its Chicago, Illinois, plant, excluding all supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first-aid men, bus operators, and laboratory samplers and chemists, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Employees Association of Interlake Iron Corporation is the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

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 Employees Association of Interlake Iron Corporation has been designated and selected by a majority of the employees paid on an hourly rate and the heaters paid on a monthly rate employed by Interlake Iron Corporation at its Chicago, Illinois, plant, excluding all supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first-aid men, bus operators, and laboratory samplers and chemists, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Employees Association of Interlake Iron Corporation is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, hours of employment, and other conditions of employment.