

In the Matter of CALUMET STEEL DIVISION OF BORG-WARNER CORPORATION and STEEL WORKERS ORGANIZING COMMITTEE

Case No. R-289.—Decided May 21, 1938

Steel Products Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; employer's refusal to grant recognition of either rival organization; strike, prior, caused by employer's refusal to sign written agreement—*Unit Appropriate for Collective Bargaining:* hourly paid production and maintenance employees, excluding foremen, assistant foremen, watchmen, and all other supervisory employees; no controversy as to—*Election Ordered:* motion, objecting to place on ballot for expression of desire to be represented by neither organization, denied—*Certification of Representatives:* following election.

Mr. Jack G. Evans, for the Board.

Pope & Ballard, by *Mr. Edward W. Ford* and *Mr. Merrill Shepard*, of Chicago, Ill., for the Company.

Mr. Thurlow G. Lewis, *Mr. Ben Myers*, and *Mr. John J. Brownlee*, of Chicago, Ill., for the S.W.O.C. and the Amalgamated.

Mr. Chris D. Gregory and *Mr. Martin P. Dolowy*, of Chicago Heights, Ill., for the Association.

Miss Fannie M. Boyls, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On July 13, 1937, Steel Workers Organizing Committee, herein called the S. W. O. C., 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 Calumet Steel Company,¹ Chicago Heights, 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 10, 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,

¹ At the hearing, upon motion of attorneys for the Company, the petition was amended to designate the Company as Calumet Steel Division of Borg-Warner Corporation.

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 8, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon Chicago Heights Steel Workers' Protective Association, herein called the Association, and Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, herein called the Amalgamated,² labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notices, a hearing was held on September 15, 1937, at Chicago, Illinois, before Charles B. Bayly, the Trial Examiner duly designated by the Board. The Board, the Company, the Amalgamated, the S. W. O. C., and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to 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 his rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On September 29, 1937, this case was transferred to and continued before the Board. 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 National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election³ on November 6, 1937, in which it found that the hourly paid production and maintenance employees of the Company, excluding foremen, assistant foremen, watchmen, and all other supervisory employees, constituted a unit appropriate for the purposes of collective bargaining and directed that an election by secret ballot be conducted to determine whether the employees in the appropriate unit desired to be represented by Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, or Chicago Heights Steel Workers' Protective Association, or by neither. 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.

² Apparently service upon the Amalgamated was considered as service upon the S. W. O. C.

³ 4 N. L. R. B. 45.

On November 12, 1937, at the request of the S. W. O. C., the Board issued an Amendment to the Direction of Election,⁴ in which it directed that the petitioning union should be designated on the ballot as "Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O."⁵

Pursuant to the Direction of Election, as amended, an election by secret ballot was conducted on November 15, 1937, by the Regional Director for the Thirteenth Region among the employees of the Company constituting the unit found appropriate by the Board. Full opportunity was afforded all parties to this proceeding to participate in the conduct of the ballot and to make challenges. On November 18, 1937, 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 to vote.....	446
Total number of ballots cast.....	431
Ballots cast for 'Steel Workers Organizing Committee, for Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O.....	210
Ballots cast for Chicago Heights Steel Workers' Protective Association.....	180
Ballots cast by employees who did not desire representation by either of above organizations.....	30
Challenged ballots cast.....	9
Ballots spoiled or void.....	2

On November 18, 1937, the S. W. O. C. filed with the Board a motion requesting the Board to find that it had received a majority of the votes cast. The motion was based upon the contention that the ballots should not have contained a provision allowing employees to vote for neither of the labor organizations named on the ballot and that votes cast for neither of the organizations should be regarded as not having been cast. The Board considered this motion and, for reasons set forth in detail in *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Local No. 1657*,⁶ denied the motion.

On November 24, 1937, S. W. O. C. filed with the Board its exceptions to the Intermediate Report, setting forth the same objections theretofore made in the motion of November 18. On November 29, 1937, the Association filed with the Board its exceptions to the Inter-

⁴ 4 N. L. R. B. 46.

⁵ The designations, "C. I. O." and "Committee for Industrial Organization," are used interchangeably throughout this decision.

⁶ 4 N. L. R. B. 55.

mediate Report of the Regional Director in which it charged that five of the employees whose ballots were challenged were ineligible to vote because they were employed in a supervisory capacity and that four other employees whose ballots were challenged should have been permitted to vote.

Upon a consideration of the Intermediate Report and the exceptions thereto, the Board found that since two of the 431 ballots reported cast were spoiled or void, only 429 ballots should be counted as cast; that the Association, even if all votes which were challenged were for it and were counted, did not receive a majority of the votes cast; that in order to determine whether or not S. W. O. C. received a majority of the votes cast, it would be necessary to determine the eligibility to vote of those employees whose ballots were challenged. The Board accordingly authorized a hearing to be held to determine the issues raised by the challenges to the ballots in question.

Pursuant to notice duly served upon the parties, a hearing upon the challenges was held at Chicago, Illinois, on January 12, 1938, before P. H. McNally, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, the Association, and the S. W. O. C. were represented by counsel. 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 objections to the admission of evidence. The Board has reviewed his rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 17, 1938, Trial Examiner P. H. McNally filed with the Board a report on the hearing on the challenged ballots. Thereafter the Board duly considered the record made at such hearing and the report of the Trial Examiner thereon and determined that six of the nine employees whose ballots were challenged were entitled to vote in the election conducted on November 15, 1937. Thereupon the Board on March 30, 1938, directed the Regional Director to open the ballots of the six employees in the presence of the duly accredited representatives of the Association and the S. W. O. C. or the Amalgamated and to report the results of the balloting. On April 9, 1938, prior to the opening of such ballots, the Association filed with the Board a motion to reopen the hearing in this proceeding for the purpose of inquiring into the propriety of a ruling by the agent conducting the election that three named employees, who both unions had agreed were ineligible, should not vote; and to permit a fourth employee, who, it was alleged, would have voted had not the above-mentioned three employees been ruled ineligible, to cast his ballot. The Association further moved that the Board re-

consider its rulings on the nine challenged ballots, and that the opening of the challenged ballots be delayed until after the Board ruled upon the motions. The Board duly considered these motions and on April 15 issued and duly served upon all the parties its order denying the motions.

Thereafter, on April 25, 1938, the Company filed with the Board a motion to dismiss this proceeding and commence a new proceeding to determine the question concerning representation; or, in the alternative, that the Board reconsider and rescind its order dated April 15 denying the motions of the Association. The Board has duly considered these motions and they are hereby denied.

As to the results of the challenged ballots which the Board ordered opened, the Regional Director reported that five votes were for Steel Workers Organizing Committee for Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O., and one was for Chicago Heights Steel Workers' Protective Association.

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

FINDINGS OF FACT-

I. THE BUSINESS OF THE COMPANY

Borg-Warner Corporation was incorporated in 1928 under the laws of the State of Illinois. In addition to owning several plants in Illinois, it owns, through subsidiaries, plants located in Indiana, Michigan, New York, Canada, and England. In 1935 it acquired the entire capital stock and in 1936 the assets of Calumet Steel Company at Chicago Heights, Illinois, and the operations at Chicago Heights were thereafter conducted under the name of Calumet Steel Division of Borg-Warner Corporation.

Calumet Steel Division of Borg-Warner Corporation, herein called the Company, manufactures merchant bars, concrete reinforcing bars, steel tubing, fence posts, and other steel products. It sells approximately 40 per cent of its products outside the State of Illinois.

The chief raw materials purchased by the Company consist of old rails and axles accumulated by railroad companies. Approximately 50,000 tons of such materials are purchased annually, about 70 per cent of which come from States other than Illinois.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, is a labor organization, affiliated with the Steel Workers Organizing Committee of the Committee for Industrial Organization. S. W. O. C. filed the petition for investigation and

certification in this case on behalf of employees of the Company who were members of or desired to be represented by the Amalgamated. S. W. O. C. claims to represent the Company's employees only through membership of such employees in the Amalgamated. The Amalgamated admits to membership all hourly paid production and maintenance employees of the Company except foremen, assistant foremen, watchmen, and other supervisory employees.

Chicago Heights Steel Workers' Protective Association is a labor organization formed among employees of the Company during the month of May 1937. The Association admits to membership all hourly paid production and maintenance employees at the Company's plant, except foremen, assistant foremen, watchmen, and other supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

In March 1937, the Amalgamated, whose membership at that time comprised a large majority of the Company's employees, commenced negotiations for a collective bargaining agreement with the Company. As a result of the latter's refusal to sign a written agreement, a strike was called on April 14 and the Company's plant was closed down.

The Association, composed of members or former members of the Amalgamated and other employees interested in returning to work, was formed about May 13, 1937. The plant reopened on May 21. About July 1, 1937, the Association claimed as members a majority of the employees of the Company and requested the Company to recognize it as the sole collective bargaining agency for all employees within the appropriate unit. This request was refused, the Company indicating, as its reason for the refusal, that the Amalgamated was also claiming as members a majority of such employees.

We find that a question has arisen concerning the 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 S. W. O. C. in its petition for investigation and certification of representatives claimed that all hourly paid production and mainte-

nance employees of the Company, excluding foremen, assistant foremen, watchmen, and all other supervisory employees, constituted a unit appropriate for the purposes of collective bargaining. It was agreed by the Amalgamated and the Association that such employees constituted the appropriate unit. The Company did not object to that classification.

We find that the hourly paid production and maintenance employees of the Company, excluding foremen, assistant foremen, watchmen, and all other supervisory employees, 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

The Amalgamated at the hearing claimed that at the date it filed its petition for an investigation and certification it represented a large majority of the Company's employees. Both the Amalgamated and the Association introduced in evidence membership lists which had been prepared from applications for membership in their respective unions. A check of these lists with the Company's pay roll of September 14, 1937, containing the names of 438 employees who were eligible for membership in both unions on July 13, 1937, the date when the petition for investigation was filed, showed that 385 of the employees had signed applications for membership in the Amalgamated and were claimed by the Amalgamated as members on July 13; and that 279 of the employees had signed applications for membership in the Association and were claimed by the Association as members on July 13. All the applications for membership in the Amalgamated were signed prior to April 2. All the applications for membership in the Association were signed between May 13 and July 13. Two hundred and eighteen of them were accompanied by resignations from the Amalgamated on printed forms attached to the applications. None of these resignations were sent in to the Amalgamated, however, and a representative of the Amalgamated testified that it had no record of a desire of any of its members to resign and that it considered all the employees who had signed applications for membership in the Amalgamated as members when the petition for an investigation was filed. The Association admitted at the hearing that one of its main purposes was to organize the employees for the purpose of getting them back to work. It is not clear, from the record, whether all employees who signed applications for membership in the Association meant to designate the Association as their continuing representative for the purposes of collective bargaining after they might return to work, or

merely as their representative for the purpose of returning them to work.

We concluded 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 accordingly issued a Direction of Election. We directed that the employees in the appropriate unit who were employed by the Company on July 13, 1937, excluding those who had since quit or been discharged for cause, should be eligible to vote in the election.

At the election nine ballots were challenged. As stated above, the closeness of the votes made it necessary for the Board to decide these challenged ballots, and another hearing was authorized for that purpose. Upon the record at that hearing, the Board finds as follows:

The heaters: Calvin E. Pearson, William M. Jahnke, Andrew F. Kocher, Alfred F. Belke, and Richard McClendon, five of the employees whose votes were challenged, are heaters. It is the duty of each of them to regulate the heat in the furnace at which he works and to spell his helpers in their work of transmitting steel materials into and out of the furnace. Each heater has from three to five helpers. The heaters, as well as their helpers, are paid on a tonnage basis, with a minimum hourly guarantee. Heaters, due to the responsible nature of their work, receive from 50 to 100 per cent higher wages than the helpers.

Generally the helpers know what work is to be done and need no supervision. Most of the instructions which they receive are transmitted to them through their heater from the roller, who has supervision over both the heaters and helpers. Each of the heaters testified at the hearing and disclaimed any power to hire or discharge their helpers. W. B. Caldwell, vice president and works manager of the Company, testified, however, that a recommendation by a heater that a helper be discharged would be respected.

Pearson and Jahnke work on 14-inch furnaces and Kocher, Belke, and McClendon on 8-inch furnaces. The 8-inch furnaces are fed by hand and the heated materials are withdrawn from them with hand tools. The heaters on these furnaces consequently spell their helpers more often than do the heaters on the 14-inch furnaces, which are not fed and emptied by hand. The former spell their helpers for 20 or 30 minutes out of each hour throughout the day; the latter spell their helpers not more than 15 minutes out of each hour and perhaps only several times each day. Their duties, however, are not sufficiently dissimilar to warrant a separate consideration.

We have heretofore, in *Matter of Interlake Iron Corporation, supra*, held that a heater, paid monthly and doing the same type of work as hourly paid heaters, should be included within the bargaining unit

comprising the ordinary production workers. We see no reason, upon considering the duties and powers of the heaters in this case, to deviate from that ruling, and it is adopted here. We, therefore, find that they were entitled to vote.

Fred C. Miller works as a loader in the reinforcing department. As part of his duties he checks, weighs, and tags reinforced bars as they pass through the department, makes out loading slips which he sends to the office, and distributes work sheets among other employees. The major portion of his duties, however, consists of operating cranes and loading materials for shipment out of the department. He, as well as other employees in that department, is under the direct supervision of the department foreman. Miller is paid on an hourly basis. We conclude that, since most of his work is physical rather than clerical and his duties are not of supervisory character, he should be included in the unit. We, therefore, find that he was entitled to vote.

Fred A. Siebert is employed in the post fabricating department. His chief duties are to check orders and shipments of materials which pass through his department and to transmit to the office his records of such materials. He at times assists in the loading of cars but such work constitutes only a minor portion of his duties. *Earl G. Flodin* is employed as a stock clerk in the shipping department, and his duties consist almost entirely of the clerical work of checking materials in and out of stock. *Russell E. Steube* is employed as a checker in the shipping department. His chief duties consist of checking the weights of materials and entering such weights upon production records. He occasionally assists in the operation of cranes and clears his department of loose steel at the end of the workday. However, such work is only incidental to his clerical duties. Each of the three above-named employees is paid on an hourly basis. Some of the duties of each of them are similar to those of Fred C. Miller. However, since most of their time is consumed in clerical work, we conclude that they should not be classified as maintenance or production workers and that they were, therefore, ineligible to vote.

A final tabulation of the votes reveals that out of 426 votes cast, the S. W. O. C. received 215, the Association received 181, and 30 employees cast votes for neither.

We find that the S. W. O. C. has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. By virtue of Section 9 (a) of the Act, it is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Calumet Steel Division of Borg-Warner Corporation, 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, excluding foremen, assistant foremen, watchmen, and all other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O., 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.

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

IT IS HEREBY CERTIFIED that Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O., has been designated and selected by a majority of the hourly paid production and maintenance employees of Calumet Steel Division of Borg-Warner Corporation, Chicago Heights, Illinois, excluding foremen, assistant foremen, watchmen, and all other supervisory employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Steel Workers Organizing Committee for the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1027, affiliated with the C. I. O., 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.