

In the Matter of PRESSED STEEL CAR COMPANY, INC. and STEEL
WORKERS ORGANIZING COMMITTEE

Case No. R-702.—Decided June 23, 1938

Railroad, Mine, and Industrial Car Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; refusal of employer to recognize union as exclusive bargaining representative—*Contract:* agreement between employer and union, applicable only to members of the contracting union, no bar to investigation and certification—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, exclusive of clerical workers, supervisory officials, salaried employees, watchmen, timekeepers, gang leaders, and inspectors; nature of duties—*Election Ordered*

Mr. Henry Shore, for the Board.

Bostwick, Reed & Armstrong, by *Mr. Earl F. Reed* and *Mr. C. M. Thorpe*, of Pittsburgh, Pa., for the Company.

Mr. Benjamin C. Sigal, of Pittsburgh, Pa., for the S. W. O. C.

Mr. J. I. Winslow and *Mr. W. D. Pinkerton*, of Pittsburgh, Pa., for the Car and Foundry Workers.

Mr. D. R. Dimick, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 23, 1937, the Steel Workers Organizing Committee, herein called the S. W. O. C.,¹ filed with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of PRESSED STEEL CAR COMPANY, INC., McKees Rocks, Pennsylvania, 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 March 23, 1938, the National Labor Relations

¹ It appears from the record that the proceedings were initiated by Steel Workers Organizing Committee for and in behalf of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1844.

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 March 29, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the S. W. O. C., and upon the Car and Foundry Workers Union, Incorporated, herein called the Car and Foundry Workers, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on April 7 and 8, 1938, at Pittsburgh, Pennsylvania, before Hugh C. McCarthy, the Trial Examiner duly designated by the Board.

The Board, the Company, the S. W. O. C., and the Car and Foundry Workers 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 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 COMPANY²

Pressed Steel Car Company, Inc., is a Pennsylvania corporation engaged in the business of manufacturing and assembling railroad passenger cars, railroad freight cars, air dump cars, mine cars and equipment, and industrial cars and equipment. The Company has a number of subsidiaries located in the United States and foreign countries. The Company operates two plants, situated in McKees Rocks, Pennsylvania, and Hegewisch, Illinois. We are here concerned only with the Company's McKees Rocks plant.

The Company purchases approximately 41 per cent of the raw materials used at the McKees Rocks plant from States other than the State of Pennsylvania. The export sales from the McKees Rocks plant amounted to \$214,383.90 for the year 1937. The total production of the Company at its McKees Rocks plant, which is shipped outside of the State of Pennsylvania, is 78.8 per cent.

On April 6, 1938, the Company had in its employ at the plant in question 572 production employees.

² The facts set forth in this section are taken from Board Exhibit No. 2, a stipulation entered into by the attorneys for the Company and by the attorney for the Board.

II. THE ORGANIZATIONS INVOLVED

Steel Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1844, represented by the S. W. O. C. in this case, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees at the McKees Rocks plant of the Company, excluding foremen, supervisors, assistant supervisors, watchmen, clerks, timekeepers, salaried employees, gang leaders, and inspectors.

The Car and Foundry Workers Union, Incorporated, is an unaffiliated labor organization admitting to its membership all employees of the Company at its McKees Rocks plant, excluding foremen, general supervisory employees, special police, clerks, and watchmen.

III. THE QUESTION CONCERNING REPRESENTATION

On April 2, 1937, the Company and Car and Foundry Workers entered into an agreement covering wages, hours, and conditions of employment of those employees of the Company at its McKees Rocks plant, and all of its subsidiary plants, who were at that time or who might thereafter become members of the Car and Foundry Workers. By its terms the agreement was to remain in effect until March 31, 1938, and thereafter from year to year unless either party to the agreement gave written notice of its desire to terminate it at least sixty (60) days prior to March 31 of any year. This agreement was executed about the time the S. W. O. C. began its organizational activities in the plant.

On June 23, 1937, the S. W. O. C. wrote a letter to H. J. Rushton, general works manager for the Company, stating that the Company's employees had chosen the S. W. O. C. as their collective bargaining agency. On June 28, 1937, Rushton replied to the letter of the S. W. O. C., stating that the Company's relations with its employees were governed by a contract between the Company and the Car and Foundry Workers. Thereafter, on February 1, 1938, the S. W. O. C. wrote a letter to the Company alleging that a majority of the Company's employees were members of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1844, herein called the Amalgamated, functioning under the direction of the S. W. O. C. and further stating that a petition for investigation and certification had been filed on December 22, 1937, with the Regional Director for the National Labor Relations Board. The letter stated that the S. W. O. C. wished to negotiate a contract with the Company which would supersede the agreement between the Company

and the Car and Foundry Workers, which was to expire on March 31, 1938. On February 7, 1938, the Company by letter replied, saying that it had a contract with the Car and Foundry Workers which continued in force until March 31, 1939, by virtue of the automatic renewal provision. It was further stated by the Company that it was of the opinion that the Car and Foundry Workers represented a majority of the Company's employees and that the Company could not have another contract in existence unless it was exactly similar to the existing contract. The Company's letter of February 7, 1938, was answered by the S. W. O. C. on February 14, 1938, in which the S. W. O. C. took the position that the purpose of its letter of February 1, 1938, had been to notify the Company officially that a majority of the Company's employees were members of the Amalgamated and that in view of the notice sent to the Company by the S. W. O. C. there could be no automatic renewal of the existing agreement.

The Car and Foundry Workers contended at the hearing that a majority of the Company's employees at its McKees Rocks plant were members of its organization and that its agreement with the Company was automatically renewed on March 31, 1938, inasmuch as neither party to the agreement gave notice of its intention to terminate the agreement. However, in view of the facts above set forth, and since the agreement is applicable only to members of the Car and Foundry Workers, the agreement is no bar to any investigation and certification of representatives by the Board.

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 Company, the S. W. O. C., and the Car and Foundry Workers during the hearing were in substantial agreement as to the classes of employees to be included within the appropriate unit for the purposes of collective bargaining. The parties agreed that the unit should include all production and maintenance employees of the Company at its McKees Rocks plant, exclusive of the clerical work-

ers, supervisory officials, salaried employees, watchmen, and timekeepers. The Car and Foundry Workers and the Company claimed that the unit should also include gang leaders and inspectors. The S. W. O. C. wished to exclude gang leaders and inspectors from the unit.

Inspectors examine the materials the employees are working upon to see if the specifications and workmanship are in accordance with the orders. If there are mistakes, they advise the foreman so that the errors can be rectified. The inspector's duties are not confined to any single department in the plant. Apparently they have nothing to do with the production employees and are not actively engaged in the process of production. Gang leaders make recommendations for transferring, hiring, and discharging employees and act as intermediaries, transmitting orders from foremen to the workers in the gang. Where the nature of the duties of the inspectors and gang leaders is such as here presented, we are of the opinion that they should be excluded from the unit if a labor organization party to the proceedings desires such exclusion. The inspectors and gang leaders will therefore be excluded in the instant case.

We find that the production and maintenance employees of the Company at its McKees Rocks plant, exclusive of clerical workers, supervisory officials, salaried employees, watchmen, timekeepers, gang leaders, and inspectors, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company at its McKees Rocks plant 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

Neither the Car and Foundry Workers nor the S. W. O. C. produced any proof at the hearing to show how many of the Company's employees at its McKees Rocks plant it represented, although both claimed to represent a majority. Accordingly, we find that an election by secret ballot is necessary to resolve the question concerning representation.

The S. W. O. C. states that the Company's pay roll of June 30, 1937, is most representative of normal employment by the Company and urges that eligibility to vote in the election be determined on the basis of that pay roll. The Company and the Car and Foundry Workers contend that the selection of any eligibility date prior to March 31, 1938, would constitute an interference with their agreement made on April 2, 1937.

The number of employees in the employ of the Company at its McKees Rocks plant varies considerably during the course of the

year. During December, the month when the petition for investigation and certification was filed, only 423 shop employees were employed by the Company. On June 30 of the same year, 1,364 shop employees were on the Company's pay roll. On April 7, 1937, at the time of the hearing, there were approximately 572 production employees in the Company's McKees Rocks plant.

We are of the opinion that eligibility to vote should not be based on a pay-roll date as far in the past as that sought by the S. W. O. C. Nor, in view of the facts set forth in Section III above, do we find merit in the contention of the Company and the Car and Foundry Workers that the agreement precludes the adoption of an eligibility date prior to March 31, 1938.

However, in view of all the circumstances and in order to best effect the policies of the Act, we feel that all employees embraced in the bargaining unit herein defined whose names appear on the pay roll next preceding April 7, 1938, the date of the hearing, should be eligible to vote and we shall so direct.

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 Pressed Steel Car Company, Inc., at its McKees Rocks, Pennsylvania, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of Pressed Steel Car Company, Inc., at its McKees Rocks plant, excluding clerical workers, supervisory officials, salaried employees, watchmen, timekeepers, gang leaders, and inspectors, 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 the purposes of collective bargaining with Pressed Steel Car Company, Inc., at its McKees Rocks plant, McKees Rocks, Pennsylvania, 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 Sixth 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 the production and maintenance employees of said Company at its McKees Rocks plant, who were in the employ of the Company during the pay-roll period next preceding April 7, 1938, excluding clerical workers, supervisory officials, salaried employees, watchmen, timekeepers, gang leaders, and inspectors, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by Car and Foundry Workers Union, Incorporated, or by Steel Workers Organizing Committee for and in behalf of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1844, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.