

In the Matter of UNITED STATES STAMPING COMPANY and PORCELAIN
ENAMEL WORKERS' UNION No. 18630

Case No. R-14

DIRECTION FOR ELECTION

January 13, 1936

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8 of the National Labor Relations Board Rules and Regulations—Series 1, it is

DIRECTED that as part of the investigation authorized by the Board in the above case to ascertain representatives for collective bargaining with the United States Stamping Company, Moundsville, West Virginia, an election by secret ballot shall be conducted within a period of one week from the date of this direction of election, under the direction and supervision of the Regional Director for the Sixth Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among the employees engaged in the production and maintenance department of the United States Stamping Company on November 5, 1935 and those employed between that date and the date of this direction of election in the production and maintenance department, excepting foremen, assistant foremen, supervisory and clerical employees, and those who quit or have been discharged for cause during such period, to determine whether or not they desire to be represented by the Porcelain Enamel Workers' Union No. 18630.

[SAME TITLE]

Decision, February 11, 1936

Stamping and Enameling Industry—Strike—Representatives: proof of choice: comparison of cancelled pay-roll checks with statements designating; membership in union—Unit Appropriate for Collective Bargaining: community of interest; functional coherence; employees on hourly and piece rate basis; distinctiveness of occupation; production and maintenance employees—Election Ordered: question affecting commerce: prior strike caused by employer's refusal

to recognize representatives—controversy concerning representation of employees; majority status disputed by employer; request by substantial number in appropriate unit—*Certification of Representatives*.

Mr. Robert H. Kleeb for the Board.

Mr. Martin Brown, of Moundsville, W. Va., for the Company.

Mr. Joseph Rosenfarb, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 4, 1935, H. G. Flaugh, an organizer of the American Federation of Labor and representing the Porcelain Enamel Workers' Union No. 18630, hereinafter called the union, filed with the Regional Director for the Sixth Region a petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935. The petition alleges that the union represents approximately 283 employees out of about 414 in the production and maintenance department of the United States Stamping Company, Moundsville, West Virginia, hereinafter called the company, that no other individuals or labor organizations claim to represent any of the employees, and that a question has arisen concerning the representation of the employees. The petition further alleges that the question concerning representation is one affecting commerce within the meaning of Section 2 (7) of the Act.

On November 12, 1935, the Board, pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, authorized the Regional Director for the Sixth Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Notice of hearing was issued and duly served, and hearings were held on November 25th and 27th, 1935, before a Trial Examiner designated by the Board.

The company, through its counsel, filed a motion to dismiss the petition and an answer wherein, *inter alia*, the constitutionality of the National Labor Relations Act was raised and the position taken that the case was not within the jurisdiction of the National Labor Relations Board. The company was represented at the hearing by counsel who cross-examined the witnesses called by the Board but who introduced no evidence in behalf of the company. The motion to dismiss the petition is hereby denied.

From the evidence adduced at the hearing and from the entire record now before it the National Labor Relations Board promulgates the following:

FINDINGS OF FACT

1. The United States Stamping Company is a corporation created and existing under the laws of the State of West Virginia and has its principal office, main plant and place of business in the City of Moundsville, in the County of Marshall and State of West Virginia. It is engaged in the manufacture, sale and distribution of enamel cooking utensils.

2. A great variety of materials, including cartons, steel, enamel, oxides, flint, borax, clay, feldspar, sand, acid, bailwoods, excelsior, silicates, wire, chrome covers, wooden handles, knobs and oil board, is used in the manufacture of the finished products of the company, 95 per cent of which is purchased from without the State of West Virginia, f. o. b. shipping point.

At least 90 per cent of the company's finished products is normally shipped to destinations outside of the State of West Virginia, to points in almost all of the States of the United States, all sales being made f. o. b. Moundsville, West Virginia.

The shipments to and from the company are by freight, express, trucks and boats of independent companies. The following freight figures covering shipments to and by the company over the Baltimore & Ohio Railroad, representing likewise the approximate average for express shipments, were picked at random by the agent for that Railroad:

SHIPMENTS TO COMPANY

1935	From States outside West Virginia	Within State of West Virginia
August.....	9 carloads.....	None
September.....	7 carloads.....	1 carload.
October.....	7 carloads.....	None

SHIPMENTS FROM COMPANY

	To States outside West Virginia	Within State of West Virginia
Aug 12.....	26 shipments.....	1 shipment.
Aug 13.....	49 shipments.....	1 shipment
Sept 24.....	43 shipments.....	1 shipment
Sept 25.....	30 shipments.....	None
Oct 8.....	28 shipments.....	1 shipment.
Oct 9.....	16 shipments.....	None.

3. In 1933, Local No. 18630 of the Porcelain Enamel Workers' Union, a labor organization affiliated with the American Federation of Labor, was organized among the employees of the United States Stamping Company. The Financial Secretary of the union

testified that the paid-up membership of the union was 229 at the time of the hearing.

During June of 1935 difficulties arose between the management and the committee of the union over the negotiation of a new collective agreement concerning wages, hours and conditions of work. The management refused to deal with the committee on the ground that the union did not represent a majority of the employees of the company.

4. On August 17, 1935, the union held a meeting which was open to all of the employees of the production and maintenance department of the company. At this meeting cards of identical tenor were circulated among those present addressed to the National Labor Relations Board, marked "(Strictly Confidential) For Government Use Only", designating the Porcelain Enamel Workers' Union No. 18630 as the agency for collective bargaining with the company, "for the purpose of negotiating an agreement on wages, hours and working conditions and for the purpose of other mutual aid and protection." 282 such cards were signed at the meeting and subsequently, and were then turned over to Ernest Dunbar, an Examiner of the National Labor Relations Board. Dunbar advised Mr. F. S. Earnshaw, Secretary and Treasurer of the company, that the cards represented a majority of the production and maintenance employees, but Mr. Earnshaw still refused to meet the committee of the union for the reason that the union did not represent a majority of the employees and for the further reason that he would, under no circumstances, deal with the representatives of a union, especially one affiliated with the American Federation of Labor, but would meet them as representatives of the employees of the company.

5. Dunbar, with the consent of Earnshaw, compared the signatures on the cards with the signatures on cancelled checks of employees supplied by the company. He found the signatures on 242 of the cards to be the same or identical with those on the cancelled checks, 19 signatures on the cards to be doubtful, and 21 to be impossible of location among the checks.

This would give the union a clear majority of the 411 production and maintenance employees whom the company employed during this period. However, the evidence presented by the cards is entirely *ex parte* in character. Although the Board may of course act on *ex parte* evidence and make findings of fact based thereon, we feel that under all the circumstances of this case an election should be held.

6. Failing to obtain recognition of the union for bargaining purposes after repeated unsuccessful attempts to settle the matter amicably, the employees of the company went out on strike on or about November 6, 1935, causing a complete shutdown of the company's

plant. The value of shipments from the company, which for the period of two weeks prior to the date of the strike amounted to \$50,000, over 90 per cent of which was interstate, dropped to \$7,000 for the three days succeeding the strike, and then the shipments ceased altogether except for desultory parcel post or express shipments. The shipment of raw materials to the company, 95 per cent of which was also interstate, must have been correspondingly affected, although no evidence on the point appears in the record.

7. As reported to the West Virginia Compensation Board, the United States Stamping Company had a total of 460 employees as of October 31, 1935, exclusive of officials of the company. Of this number there were 27 employed on the office force, 15 were foremen and assistant foremen, and 7 have since been laid off, leaving a total of 411 employed in production and maintenance.

The office force includes typists, clerks and the sales manager. In general, it is clear that they constitute a group with functions sharply distinguished from that of the employees engaged in actual processing operations, are paid on a salary basis as against piece-rate and hour-rate bases governing the production and maintenance group, are paid on the 15th and 30th of each month while the production and maintenance employees are paid on the 7th and 23rd of each month, and are regarded by the latter and by themselves as a distinct department. At the hearing they made no claim to be recognized as an independent bargaining unit or to be included in a total employer unit.

The foremen and assistant foremen are paid respectively on a salary and an hourly basis and ought also to be excluded as having supervisory authority and duties that relate them more directly to the management than to the workers.

The one unit clearly defined as to function and interest in establishing a mechanism for collective bargaining is the production and maintenance unit engaged in the actual processing of enamelware and incident activities, and not the total number of employees of the company as contended for by counsel for the company. The production and maintenance department was described in the testimony as consisting of welding, press, enameling, dipping, spraying, beading, baking, packing, shipping, pickling, maintenance, day laborers and night watchmen.

CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The United States Stamping Company is a corporation created and existing under the laws of the State of West Virginia and has its principal office, main plant and place of business in the City of Moundsville, County of Marshall and State of West Virginia. It is engaged in the manufacture and sale of enamel cooking utensils. As

of October 31, 1935 it employed 411 persons engaged in the production and maintenance department.

2. A great variety of materials is used in the manufacturing of the finished products of the company, 95 per cent of which is purchased from without the State of West Virginia, f. o. b. shipping point. At least 90 per cent of the company's finished products is normally shipped to destinations outside of the State of West Virginia to points in almost all of the states of the United States, all sales being made f. o. b. Moundsville, West Virginia.

3. The Porcelain Enamel Workers' Union No. 18630 is a labor organization organized in 1933 and affiliated with the American Federation of Labor, whose membership is composed of employees of the company engaged in the production and maintenance department. The Financial Secretary of the union testified at the hearing that the paid-up membership of the union was then 229. The evidence tends to indicate that 242 employees in the production and maintenance department have designated the union as their representative for the purposes of collective bargaining.

4. The employees engaged in the production and maintenance department of the company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. Repeated attempts have been made by the union to negotiate with the management of the company as the authorized representative of the production and maintenance employees for the purpose of collective bargaining. The company refused to deal with the union as the representative of the employees of the company engaged in the production and maintenance department for the purpose of collective bargaining, for an alleged reason, *inter alia*, that the union did not represent a majority of the production and maintenance employees of the company.

6. This controversy finally led on November 6, 1935 to a strike of the employees of the company, precipitating a complete shutdown of the production plant of the company and a cessation of production, with a consequent interruption of commerce and the free flow of commerce.

7. A question concerning representation has arisen among the production and maintenance employees of the company, within the meaning of Section 9 (c) of the Act.

8. The question concerning representation which has arisen has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

9. It is the conclusion of the National Labor Relations Board that a question affecting commerce has arisen concerning the representa-

tion of the production and maintenance employees of the United States Stamping Company, within the meaning of Section 9 (c) of the Act, and that an election by secret ballot should be conducted to ascertain who shall represent such employees.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

February 11, 1936

A petition for certification of representatives having been duly filed, an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on January 20, 1935 among the production and maintenance employees of the United States Stamping Company, located at Moundsville, West Virginia, pursuant to the National Labor Relations Board's Direction for Election dated January 13, 1935, and an intermediate report finding that Porcelain Enamel Workers' Union No. 18630 had been selected by a majority of such employees having been prepared by the Regional Director for the Sixth Region and served upon the parties, and no substantial and material issue with respect to the conduct of the ballot having been raised by the objections filed with this Board by the Company, pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1,

THEREFORE, 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, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1,

IT IS HEREBY CERTIFIED that Porcelain Enamel Workers' Union No. 18630 has been selected by a majority of the production and maintenance employees of the United States Stamping Company as their representative for the purposes of collective bargaining and that pursuant to the provisions of Section 9 (a) of said Act, Porcelain Enamel Workers' Union No. 18630 is the exclusive representative of all the production and maintenance employees of the United States Stamping Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. SMITH took no part in the consideration of the above Certification of Representatives.