

IN the Matter of PITTSBURGH STEEL COMPANY *and* AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA; ALL NATIONS LODGE No. 164, MONESSEN, PENNSYLVANIA AND ALLENPORT LODGE No. 160, ALLENPORT, PENNSYLVANIA

Case No. R-15.—Decided February 24, 1936

Iron and Steel Industry—Employee Representation Plan: form and operation; effect of participation in election of representatives under—Unit Appropriate for Collective Bargaining: production and maintenance employees; employees on hourly, tonnage or piece work basis—Election Ordered: question affecting commerce: confusion and unrest among employees—controversy concerning representation of employees: request by substantial number in appropriate unit; rival organizations.

Mr. Robert H. Kleeb for the Board.

Reed, Smith, Shaw & McClay, by *Mr. John J. Heard*, of Pittsburgh, Pa., for the Company.

Reed, Smith, Shaw & McClay, by *Mr. John C. Bane, Jr.*, of Pittsburgh, Pa., for Employee Representation Plan.

Mr. Charlton Ogburn and *Mr. Arthur E. Reyman*, of Washington, D. C., for Lodges Nos. 160 and 164.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

Petitions for investigations and certifications of representatives, pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, and Article III, Section 1 of National Labor Relations Board Rules and Regulations—Series 1, were filed with the Regional Director for the Sixth Region by All Nations Lodge No. 164 (hereinafter referred to as Lodge No. 164), and Allenport Lodge No. 160 (hereinafter referred to as Lodge No. 160), Amalgamated Association of Iron, Steel and Tin Workers of North America, on November 6, 1935, alleging that a question affecting commerce had arisen concerning the representation of employees in the Monessen and Allenport plants, respectively, of the Pittsburgh Steel Company, Pittsburgh, Pennsylvania (hereinafter referred to as the Company). The National Labor Relations Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules

and Regulations—Series 1, authorized the Regional Director to conduct investigations. In connection therewith, the Regional Director, on December 13, 1935, issued a joint notice of hearing, copies of which were served on the Company and on Joseph Ditt'a and Karl H. Klein, Secretaries of the Employees Representation Plans in the two plants. On December 31, 1935, copies of an amended notice of hearing were served on the above-mentioned parties.

Pursuant to the amended notice of hearing, a joint hearing on both petitions was held on January 7, 8, 10 and 11, 1936, in Pittsburgh, Pennsylvania, before M. W. Acheson, Jr., duly designated by the National Labor Relations Board to act as Trial Examiner. The Company, the Employees Representation Plans, and the petitioners were represented by counsel and participated in the hearing. Much testimony and several exhibits were received in evidence over the objection of counsel for the Company. The Board has reviewed the ruling of the Trial Examiner and holds that no error was committed.

Upon the evidence adduced at the hearing and from the entire record before it, including the transcript of the hearing, exhibits introduced, pleadings filed and brief submitted, the National Labor Relations Board promulgates the following:

FINDINGS OF FACT

1. The Pittsburgh Steel Company is a corporation organized under and existing by virtue of the laws of the State of Pennsylvania, having its principal office in Pittsburgh, Pennsylvania, and engaged in the manufacture of iron, steel, and finished and unfinished steel products. It has an authorized capital stock of \$50,000,000, of which \$35,850,000 has been issued and is outstanding. The Company has a registered trademark and states in its application for registration, "that said trademark is used by said corporation in commerce among the several states of the United States." The Company advertises in industrial magazines having national and international distribution.

2. The principal plant of the Company is at Monessen, Pennsylvania. The Monessen plant has an annual capacity of 480,000 tons of iron and 720,000 tons of steel. About 400,000 tons of raw materials are shipped into this plant in a normal year. On January 8, 1936, 3,173 persons were employed in this plant, which was then operating at about 40 percent of capacity.

3. The Allenport, Pennsylvania, plant of the Company is a finishing plant, manufacturing only seamless steel tubing. It has an annual capacity of 240,000 tons of tubing. On January 8, 1936, 1,196 persons were employed at this plant, which was then operating from 50 to 60 per cent of its capacity.

4. Many types of materials are brought into the plants, including ore, coal, coke, scrap iron and other ingredients used in the actual manufacture of steel, and in addition, large quantities of materials used for equipment and maintenance of the plant. The ore used is practically all secured from ore mines located in Minnesota and Michigan in which the Company has a substantial interest. The entire coal requirements are supplied by the Monessen Coal and Coke Company, a wholly-owned subsidiary of the Company, from mines located in Monessen and Gray's Landing, Pennsylvania. The other materials are secured from sources throughout the United States.

5. Incoming and outgoing materials from the two plants are carried in the main by means of railroads. They are also carried by barges operating on the Monongahela River, a navigable stream which borders both plants.

The Monessen plant is served by the Pittsburgh & Lake Erie and the Pittsburgh & West Virginia Railroads. The tracks of the Pittsburgh & Lake Erie Railroad divide the Monessen plant. Cars brought into this plant by the Pittsburgh & Lake Erie are dropped at one of the five or six interchange points of the Pittsburgh & Lake Erie and the Monessen & Southwestern Railroad, a wholly-owned subsidiary of the Company, the latter then distributing cars to the various points within the plant where they are to be used. The terminal of the Pittsburgh & West Virginia Railroad is about three to three and a half miles from the Monessen plant at Monessen Junction. Cars consigned to the Company are deposited by the Pittsburgh & West Virginia at this terminal and are then picked up by the Monessen & Southwestern Railroad, conveyed to the plant, and distributed to desired points within the plant.

The Allenport plant is served by the Pennsylvania Railroad, which puts cars consigned to the Company on sidings where they are picked up by switching engines owned by the Company and distributed throughout the plant.

Outgoing shipments by railroads in both plants consist of the reverse operations of incoming ones.

Much of the material used in the Allenport plant consists of billets and ingots manufactured at the Monessen plant. These materials are loaded into barges at the Monessen plant and conveyed five to six miles up and across the Monongahela River to the Allenport plant. These barges are owned and operated by the Monessen Coal & Coke Company.

The balance of the incoming and outgoing materials shipped by boat are carried by contract carriers on the Monongahela and Mississippi River System from and to points at least as far south as Memphis, Tennessee, and as far west as St. Louis, Missouri.

6. Records submitted by the freight agents of the respective railroads show:

Name of Railroad	Period covered	Percentage of incoming shipments consigned to the Pittsburgh Steel Company, which were interstate	Percentage of outgoing shipments from the Pittsburgh Steel Company, which were interstate	Percentage of the entire business of the railroads at the respective termini furnished by the Pittsburgh Steel Company
Pittsburgh & Lake Erie.....	Feb 1-28, 1935	44 7	81 3	41.8
Pittsburgh & West Virginia.....	Oct. 1-31, 1935	70	100	99.1
Pennsylvania Railroad.....	Oct. 1-31, 1935	52 2	92	90-160

7. Each operation in both of the plants is dependent upon the operation preceding it.

Ore and other raw materials taken into the Monessen plant are unloaded by cranes owned and operated by the Company and placed in piles. Cranes similarly owned and operated carry the materials to the blast furnace. The molten mass produced in the blast furnace is carried by ladles, pulled by an electric locomotive a distance of 200 yards to the open hearth. Ladles, locomotives and tracks used in this operation are the property of the Company. At the blast furnace other ingredients are added to the mass and ingots are produced. The ingots are then subject to one of two dispositions. A portion of them is sent to the Allenport plant by barge, as described in paragraph 5 of the Findings of Fact. The balance is retained in the Monessen plant for further processing, being then taken to the blooming mill where billets are produced. Billets are subject to three dispositions. A portion is sold to other manufacturers for further processing; another portion is sent to the Allenport plant for finishing as tubing; and the balance is retained by the Monessen plant to be sent to the rolling mill, and from there into the various finishing departments to produce wire, nails, fencing and other finished products produced in the Monessen plant. Finished products are then loaded into cars by cranes for shipment or stored in warehouses for future sale and delivery.

Within the plant all departments are served by railroad tracks and equipment which are owned and operated by the Monessen & Southwestern Railroad, with the exception of the tracks and equipment connecting the blast furnace with the open hearth. All loading and unloading of cars is performed by employees of the Company. Barges on the river, however, are loaded and unloaded by the Monessen Coal and Coke Company employees.

Materials received in the Allenport plant from the Monessen plant are unloaded by locomotive cranes at the docks and placed in cars which are distributed by engines owned and operated by the Com-

pany to various points within the Allenport plant. Here they go either through a process producing hot finished tubing or cold drawn tubing, which is then shipped out from the plant. All departments in the Allenport plant are served by the tracks and equipment owned and operated by the Company. Materials received by rail in the Allenport plant are picked up from the Pennsylvania Railroad siding, which adjoins the plant, by the Company's engines which then distribute cars throughout the plant. All loading and unloading of cars is done by Company employees. Practically all tubing manufactured in the Allenport plant is made to order.

8. The products of the Company are sold throughout the United States and Canada and are also sold for export. The Company has branch sales offices in most of the principal cities of the United States including Chicago, Detroit, Houston, Los Angeles, Memphis, New York, Philadelphia, St. Louis, San Francisco, Syracuse and Tulsa.

9. All of the aforesaid operations, as described in paragraphs 1 to 8 inclusive above, constitute a continuous flow of trade, traffic and commerce among the several states.

10. Lodges No. 164 and No. 160 are labor organizations which were organized in the Monessen and Allenport plants, respectively, during the summer of 1933. Both are locals of the Amalgamated Association of Iron, Steel and Tin Workers of North America, which is affiliated with the American Federation of Labor.

11. It was testified to by the Presidents of the respective Lodges that approximately 2,000 employees of the Monessen plant are members of Lodge No. 164 and 1,100 employees of the Allenport plant are members of Lodge No. 160. These figures would include a substantial number of employees of the Monessen and Allenport plants, respectively.

12. The Employees Representation Plan, a plan for the selection of representatives by employees, was introduced by the Company into the Monessen and Allenport plants in June, 1933. No vote was ever taken to determine whether or not the employees desired the plan to be put into effect. Representatives nominated and elected by secret ballot in each subsequent year have settled certain individual grievances and have perhaps been instrumental in obtaining improved working conditions. However, the evidence does not convince us that there has been collective bargaining in the normal sense.

Voting by employees for representatives under the Plan cannot be regarded as an adoption of the Plan as a mode of representation.

The constitution of the Employees Representation Plan at the Allenport plant provides:

"II. 3. A Representative shall be deemed to have vacated office upon severance of his relations with the Company.

"III. 1. Any person shall be considered qualified for the nomination and selection as a Representative.

"VII. 5. For time necessarily lost, through actual attendance at regular or special meetings or conference jointly approved, Representatives shall receive from the Company payment commensurate with their average earnings.

"X. It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity."

The constitution of the Employees Representation Plan in effect at the Monessen plant is substantially the same as far as the above quoted provisions are concerned. These provisions contemplate that only a natural person employed by the Company is eligible for election as a representative under the Plan.

Individual members of Lodges No. 164 and No. 160, if elected representatives, are compelled to act only in conformity with the Employees Representation Plan and not as agents of Lodges No. 164 and No. 160, respectively.

13. Lodges No. 164 and No. 160 attempted to secure recognition from the Company as collective bargaining agents in July, 1934, and in April, 1935. At both times the Company refused to recognize them as such on the basis that the Company had no knowledge as to how many persons desired the Lodges to represent them. After the refusal by the Company in 1934, a petition was addressed to the National Steel Labor Relations Board by Lodges No. 164 and No. 160 requesting that an election be held. An election order, issued in January, 1935, was delayed by the Company's appeal to the Circuit Court of Appeals. Before a decision had been rendered by that Court, the Supreme Court's decision holding the National Industrial Recovery Act unconstitutional terminated all further proceedings.

14. A question concerning the representation of employees has arisen in the Monessen and Allenport plants of the Company. The question of whether a majority of the employees wish to be represented by Lodges No. 164 and No. 160, respectively, or by the representatives selected under the Employees Representation Plans, can best be determined by the holding of elections by secret ballot.

15. The question concerning representation which has arisen in the plants of the Company has created confusion and unrest, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. In each of the plants of the Company, those employees engaged in production, maintenance, service and transportation paid on an hourly, tonnage, or piece basis, except those engaged in a clerical capacity, policemen, watchmen, hospital employees and all officials and others in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining.

CONCLUSIONS OF LAW

1. In each of the plants of the Company, those employees engaged in production, maintenance, service and transportation who are paid on an hourly, tonnage or piece basis, except those engaged in a clerical capacity, policemen, watchmen, hospital employees and all officials and others in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of employees in the Monessen and Allenport plants of the Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTION (MONESSEN PLANT)

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, it is

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining between the employees in the Monessen plant of the Pittsburgh Steel Company and the Pittsburgh Steel Company, an election by secret ballot shall be conducted within a period of ten days from the date of this direction of election under the direction and supervision of Clinton S. Golden, Regional Director for the Sixth Region, acting in this matter as agent of the National Labor Relations Board and subject to Article III, Section 9 of its Rules and Regulations—Series 1, among all production, maintenance, service and transportation employees paid on an hourly, tonnage or piece basis in the Monessen plant of the Pittsburgh Steel Company on the payroll on the date of the payment of wages immediately preceding the date of this direction, except those employees engaged in a clerical capacity, policemen, watchmen, hospital employees and all officials and others in a supervisory capacity, to determine whether they desire to be represented by the Amalgamated Association of Iron, Steel and Tin Workers of North America, All Nations Lodge No. 164, or by the Employees Representation Plan.

DIRECTION OF ELECTION (ALLENPORT PLANT)

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, it is

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining between the employees in the Allenport plant of the Pittsburgh Steel Company and the Pittsburgh Steel Company, an election by secret ballot shall be conducted within a period of ten days from the date of this direction of election under the direction and supervision of Clinton S. Golden, Regional Director for the Sixth Region, acting in this matter as agent of the National Labor Relations Board and subject to Article III, Section 9 of its Rules and Regulations—Series 1, among all production, maintenance, service and transportation employees paid on an hourly, tonnage or piece basis in the Allenport plant of the Pittsburgh Steel Company on the payroll on the date of the payment of wages immediately preceding the date of this direction, except those employees engaged in a clerical capacity, policemen, watchmen, hospital employees and all officials and others in a supervisory capacity, to determine whether they desire to be represented by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Allenport Lodge No. 160, or by the Employees Representation Plan.