

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

Mr. Jack G. Evans, for the Board.

Pope and Ballard, by *Mr. Edward W. Ford*, of Chicago, Ill., for Interlake Iron Corporation.

Mr. Thurlow G. Lewis, of Chicago, Ill., for Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657.

Mr. John F. Cusack, of Chicago, Ill., for Employees Association of Interlake Iron Corporation.

Mr. Lester Asher, of counsel to the Board.

DIRECTION OF ELECTION

November 9, 1937

The National Labor Relations Board, having found upon an examination of the record in the above matter that a question affecting commerce has arisen concerning the representation of employees of Interlake Iron Corporation, Chicago, Illinois, and 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, gate-men, 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, 49 Stat. 449, and acting pursuant to the power vested in it by Section 9 (c) of said Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that, as part of its investigation to ascertain representatives for the purposes of collective bargaining with Interlake Iron Corporation, Chicago, Ill., an election by secret ballot shall be conducted within a period of fifteen (15) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Thirteenth 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 paid on an hourly rate and the heaters paid on a monthly rate employed by the Company at its Chicago, Illinois, plant, on June 24, 1937, excluding all supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first aid men, bus operators, and laboratory samplers and chemists, and excluding all those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, or Employees Association of Interlake Iron Corporation for the purposes of collective bargaining, or by neither.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Direction of Election.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

November 20, 1937

On November 9, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled matter.

On November 11, 1937, and on November 15, 1937, Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, respectively, filed with the Board requests that it amend the Direction of Election by designating the petitioning union as "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." Copies of said requests were served upon Interlake Iron Corporation and upon Employees Association of Interlake Iron Corporation, and no objection thereto has been received by the Board.

The Board hereby amends its Direction of Election by striking therefrom the name, "Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657", wherever it occurs, 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."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

November 23, 1937

On November 9, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled case, the election to be held within fifteen (15) days from the date of the Direction.

On November 11, 1937, and on November 15, 1937, Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, respectively, filed with the Board requests that it amend the Direction of Election by designating the petitioning union as "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."

On November 18, 1937, the same parties filed with the Board a joint request that the Direction of Election be further amended by striking therefrom the words "or by neither", which appear in the last line of said Direction of Election.

Copies of said requests were served upon Interlake Iron Corporation and upon Employees Association of Interlake Iron Corporation.

In order to afford the Board opportunity to consider these requests, the Board hereby amends its Direction of Election issued on November 9, 1937, by striking therefrom the words, "within a period of fifteen (15) days from the date of this Direction", wherever they occur therein, and substituting therefor the words, "within a period of thirty (30) days from the date of this Direction".

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

December 7, 1937

On November 9, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled case, the election to be held within fifteen (15) days from the date of the Direction. Thereafter Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657 filed with the Board requests that it amend the Direction of Election by designating the petitioning union as

"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.", and also that the Direction of Election be further amended by striking therefrom the words "or by neither." On November 20, 1937, the Board amended the Direction of Election, changing the name of the petitioning union as requested, and on November 23, 1937, the Board further amended the Direction of Election by striking therefrom the words "within a period of fifteen (15) days from the date of this Direction", and substituting therefor the words "within a period of thirty (30) days from the date of this Direction."

Employees Association of Interlake Iron Corporation, by John F. Cusack, its counsel, filed with the Board, on November 22, 1937, a petition and motion to amend the Direction of Election by adding certain additional classes of employees to those eligible to vote at the election, and on November 23, 1937, a petition joining in the motion to strike the words "or by neither" from the Direction of Election.

On December 2, 1937, counsel for Steel Workers Organizing Committee appeared before the Board at Washington, D. C., and orally argued the motion to amend the Direction of Election by striking therefrom the words "or by neither."

In order to afford the Board opportunity to consider these petitions and motions, the Board hereby amends its Direction of Election issued on November 9, 1937, as amended, by striking therefrom the words, "within a period of thirty (30) days from the date of this Direction", and substituting therefor the words, "within a period of sixty (60) days from the date of this Direction."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

SUPPLEMENT TO DIRECTION OF ELECTION

December 28, 1937

By its Direction of Election dated November 9, 1937, as amended, the National Labor Relations Board, herein called the Board, as part of its investigation to ascertain representatives for the purposes of collective bargaining with Interlake Iron Corporation, Chicago, Illinois, directed the Regional Director for the Thirteenth Region, acting as the agent of the Board and subject to the provisions of National Labor Relations Board Rules and Regulations—Series 1, as amended, to conduct an election by secret ballot among the em-

ployees paid on an hourly rate and the heaters paid on a monthly rate employed by said company, at its Chicago, Illinois, plant, on June 24, 1937, excluding all supervisory employees, cafeteria managers, patrolmen, watchmen, gatemen, first aid men, bus operators, and laboratory samplers and chemists, to determine whether they desire to be represented by 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., or Employees Association of Interlake Iron Corporation, for the purposes of collective bargaining, or by neither.

On November 18, 1937, Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, 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. On November 23, 1937, Employees Association of Interlake Iron Corporation filed a petition stating that it had no objection to the granting of the motion to strike the words "or by neither" and that it joined therein. Notice of a hearing for the purpose of oral argument on this motion was served upon all the parties to this proceeding and also upon Charlton Ogburn, counsel for the American Federation of Labor and upon Lee Pressman, counsel for the Committee for Industrial Organization. Pursuant to the notice a hearing was held before the full Board at Washington, D. C., on December 2, 1937. Steel Workers Organizing Committee availed itself of this opportunity for argument and appeared by its counsel, Anthony Wayne Smith.

Section 9 (a) of the National Labor Relations Act reads as follows: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ." The problems presented by this Section were analyzed by the Board in *Matter of R. C. A. Manufacturing Company, Inc.* and *United Electrical & Radio Workers of America*,² and it was there stated:

Three interpretations of this language as applied to election cases have been suggested: (1) the phrase, "majority of the employees", refers to an affirmative majority of the employees eligible to vote, so that to be certified as the exclusive representative an organization must have received a number of affirmative votes equal to a majority of the employees eligible to vote in the election; (2) the phrase "majority of the employees", refers to

² 2 N. L. R. B. 159.

the employees participating in the election, so that the organization which is the victor in an election participated in by at least a majority of the eligible employees is to be certified as the exclusive representative; (3) the phrase, "majority of the employees", refers to a majority of the eligible employees voting in the election, so that the organization receiving a majority of the votes cast is to be certified as the exclusive representative (p. 173).

After a detailed discussion of all the available decisions involving this problem, the Board concluded:

It is an accepted canon of statutory construction that an unwise and unworkable interpretation is to be rejected if another, and sensible, interpretation is at hand. Consequently, we feel that the third interpretation mentioned above, a majority of the eligible employees voting in the election, is required if the intent of Congress in enacting the Act is to be fulfilled. Such an interpretation is in harmony with decisions of the Supreme Court interpreting similar phrases to refer to the votes cast rather than to the number of eligible voters (p. 177).

Following these cases the phrase, "majority of the employees," in the Act must be interpreted as meaning a majority of the employees who participate in the election, so that the organization receiving a majority of the votes cast is entitled to certification. Such an interpretation is both consistent with the broad declarations of the Act in favor of the procedure of collective bargaining, since it facilitates the choice of representatives to carry on that bargaining, and in accord with the general concepts and court decisions concerning elections (pp. 177, 178).

In carrying out this principle of ascertaining the will of the majority of the employees, the Board has in cases involving only one labor organization directed that an election be conducted to determine whether or not the employees desired that union to represent them. The ballot in such cases provides a space to vote for, and a space to vote against, the named organization.

Similarly, in elections involving two or more rival unions, the Board has provided for a space on the ballot in which a voter may indicate that he does not desire either of the named unions to represent him.³ It is this space on the ballot, in which an employee is given the opportunity to vote against both named organizations, which is contemplated by the words "or by neither" appearing in the Direction of Election in the present case. The motion to strike

³ *Matter of American France Line et al. and International Seamen's Union of America*, 3 N. L. R. B. 64.

out these words is aimed at removing from the ballot any additional space which allows the employees to vote against both organizations and is intended to provide for a ballot with only two spaces, one naming 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., and the other naming Employees Association of Interlake Iron Corporation.

It is obvious that with ballots of the type prescribed by the Board a small number of employees voting "neither" may in some cases prevent either of the designated unions from securing a majority. Counsel for Steel Workers Organizing Committee argued that a minority favoring neither union might, therefore, thwart the desires of a vastly greater number of employees and that the Board's policy was placing too much emphasis upon the rights of a minority.

The Act, however, does not require an unwilling majority of employees to bargain through representatives. It merely guarantees and protects that right of a majority if it chooses to exercise it. Yet if the opportunity of voting against the organizations named on the ballot were denied, a majority might be forced against its will to accept representation by one or other of the nominees. The policy adopted by the Board is designed merely to make sure that the votes recorded for a particular representative express a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives. Anything which is inconsistent herewith in *Matter of International Mercantile Marine Company et al.* and *International Union of Operating Engineers, Local No. 3*,⁴ is hereby expressly overruled.

It was contended by counsel for Steel Workers Organizing Committee that the privilege of an employee to indicate that he does not desire either of the named unions to represent him, if it must be preserved, could also be expressed by refraining from voting or by casting a blank ballot. In line with other authorities both before and after⁵ our decision, however, we indicated in *Matter of R. C. A. Manufacturing Company, Inc.* (*supra*) that those not voting would be presumed to acquiesce in the choice of the majority who do vote, and thus the employee who does not desire to be represented by either designated union would not express this preference by refraining from voting. As to the solution of casting a blank ballot, the practice of the Board, again in line with other authorities,⁶ has been to hold that a blank ballot is to be regarded as a failure to vote by one qualified to do so. We see no advantage in forcing employees who

⁴ 1 N. L. R. B. 384.

⁵ *Virginian Railway Company v. System Federation No. 40*, 300 U. S. 515, 57 S. Ct. 592.

⁶ *The Association of Clerical Employees of the A. T. & S. F. Railway System et al. v. Brotherhood of Railway and Steamship Clerks et al.*, 85 F. (2d) 152 (C. C. A. 7th, 1936).

disapprove of the nominees to adopt the rather ambiguous method of expression involved in casting a blank ballot, when their choice can be clearly indicated, by providing a space therefor.

For the reasons which we have outlined, it is the conclusion of the Board that a free expression of the desires of the majority of the employees in the unit found appropriate in the present case demands that the ballot provide for a space in which employees may indicate that they do not desire to be represented by either of the named organizations. The motion to amend the Direction of Election by striking therefrom the words "or by neither" is hereby denied.

In the event that the election in the present case results in none of the three preferences obtaining a majority of the votes cast, we will, upon the request of the labor organization receiving the greater number of votes, promptly direct a run-off election in which the ballot will allow employees the opportunity to vote for or against this organization.

Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, concluded their joint motion to delete the words "or by neither" with the following statement:

And in the event this Honorable Board does not grant the request of your petitioners as above set forth, the undersigned respectfully request this Honorable Board to permit your petitioners to withdraw or dismiss the petitions heretofore filed in these proceedings, and that said election under said Direction of Election be not held.

The petition filed by Employees Association of Interlake Iron Corporation on November 23, 1937, states that it is in response to the request to amend the Direction of Election by striking therefrom the words "or by neither" and joins in said request. No mention is made of the further request that no election be held in the event the amendment is not allowed, and instead the petition of Employees Association prays that the election take place without further delay. Since the original and amended petition for investigation and certification of representatives names Employees Association of Interlake Iron Corporation as another known labor organization claiming to represent employees in the unit appropriate for collective bargaining purposes, and this organization intervened and participated in the hearing, and, as evidenced by the present state of the record, desires that an election be held, the motion to dismiss the petition for certification and investigation and to vacate the Direction of Election is hereby denied.

On November 22, 1937, Employees Association of Interlake Iron Corporation filed its petition requesting that the Direction of Elec-

tion be amended by adding to those employees eligible to vote the following: (a) Laboratory samplers paid on an hourly basis; (b) Clerks in the plant paid on a monthly basis; (c) Weigh-masters or scalers paid on a monthly basis; (d) Timekeepers paid on a monthly basis; and (e) Homer E. Lynch, a utility man paid on a monthly basis. The petition further prayed for an opportunity to submit evidence relating to these employees, and also requested that in the event no ruling concerning these employees was made by the Board prior to the date of the election, that they be allowed to vote under protest and thus cause no delay. On December 4, 1937, Steel Workers Organizing Committee filed its objections to the granting of these requests.

The Direction of Election of November 9, 1937, as amended, was issued for the purpose of securing the conduct of the election as soon as possible, and although the Board did not at the same time issue a decision embodying complete findings of fact and conclusions of law, the Direction of Election set forth the Board's carefully considered conclusion relating to the employees constituting the unit appropriate for collective bargaining. Employees Association of Interlake Iron Corporation was represented by counsel throughout the hearing held in this case and submitted evidence relating to the appropriate unit and the employees to be included therein. The record discloses that both labor organizations, together with Interlake Iron Corporation, offered testimony concerning all the employees appearing on the pay rolls and included material involving the employees which, the petition filed on November 22, 1937 contends, should be added to the list of eligible voters. The petition sets forth no facts which were not touched upon at the hearing. For these reasons the motions presented by the petition of Employees Association of Interlake Iron Corporation are hereby denied.

EDWIN S. SMITH, dissenting:

I fully appreciate the force of the argument that a majority, not desiring representation by any labor organization named on a ballot, should not be forced to be represented in collective bargaining by an agency which is merely the majority choice of an actual minority of employees participating in the election. This problem can be met, however, without raising the other difficulties presented by the solution approved by the majority of the Board.

I would permit the "or by neither" place to continue to appear on the ballot. I would provide, however, that unless the ballots marked in this space constitute a majority of the ballots cast they should be disregarded in tabulating the effective vote. Under such an arrangement these ballots would merely have filled the role of indicating to the Board that less than a majority of those voting do not

desire to be represented by either labor organization. The wishes of this minority should then properly be held ineffective to prevent a choice of representative by the majority of the employees who desire representation by one of the contending agencies.

If a majority of those casting ballots should mark their ballots in the "or by neither" space, no representatives should be certified. Otherwise, the choice of a majority of employees voting in favor of representation by one of the rival organizations should be declared to be the representative of all.

The purpose of an election under the Act is to allay an existing controversy over representation. The heart of that controversy in the case before us is the wishes of the active partisans for either of the candidates. It has already happened in the Board's experience with the use of the "or by neither" place on the ballot that a minority of a very few ballots so marked can destroy the bargaining choice of a large majority of the employees who have voted for either one or the other contending labor organization. To permit the continuance of a device which can produce such illogical results seems to me entirely gratuitous, particularly when it does not appear to be required either by the purposes or the wording of the Act.