

IN the Matter of BINGHAM & TAYLOR CORPORATION *and* LOCAL 2001
OF THE AMALGAMATED ASSOCIATION OF IRON, STEEL & TIN WORKERS
OF NORTH AMERICA, through the STEEL WORKERS' ORGANIZING
COMMITTEE

Case No. R-261.—Decided December 3, 1937

Metal Castings Manufacturing—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize and bargain with petitioning union until question of representation is determined—*Unit Appropriate for Collective Bargaining:* functional coherence; eligibility for membership in both rival organizations; no controversy as to—*Representatives:* proof of choice: membership in union; comparison of membership cards with pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. Norman F. Edmonds, for the Board.

Botsford & Weber, by *Mr. Burt G. Weber*, of Buffalo, N. Y., for the Company.

Mr. Elmer F. Cope, of Buffalo, N. Y., for the Amalgamated.

Mr. Henry F. Sternau, of Cincinnati, O., for the Molders.

Mr. A. Bruce Hunt, Jr., of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On August 11, 1937, Steel Workers' Organizing Committee, herein called the S. W. O. C., filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Bingham & Taylor Corporation, Buffalo, New York, 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 19, 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, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 24, 1937, the Regional Director issued a notice of hearing to be held at Buffalo, New York, on August 30, 1937, copies of which were duly served upon the Company, the S. W. O. C., and Local No. 84 of International Molders' Union of North America, herein called the Molders, a labor organization claiming to represent employees in the bargaining unit alléged in the petition to be appropriate. Pursuant to the notice and after a continuance, a hearing was held in Buffalo, New York, on August 31, 1937, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the S. W. O. C. by the Assistant to its Regional Director, and the Molders by their Agent, and all 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 on 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.

During the course of the hearing the petition in the instant case was amended by striking out the words "Steel Workers Organizing Committee" wherever they appeared therein and inserting therefor the words "Local 2001 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, through the Steel Workers Organizing Committee", herein called the Amalgamated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a corporation organized under the laws of the State of New York on July 28, 1928, and has its sole plant and office in Buffalo, New York. The finished products manufactured by the Company are iron roadway services, valve boxes, and miscellaneous castings which are sold principally to water and gas utility companies. The Company advertises its products in circulars and trade magazines which circulate outside New York.

Raw materials, consisting of scrap iron, steel, coke, and sand, are purchased principally within the State of New York; however, the Company sold finished products slightly in excess of 1,544 tons during the first six months of 1937, shipping approximately 1,047 tons to points outside the State of New York and the remainder to points within the State. Shipments were made, generally by rail, to purchasers in all the New England States, all the Middle Atlantic States, all Midwestern States, and Kentucky, South Carolina, and West Virginia. A small proportion of the products shipped to points within

the State of New York was routed through Pennsylvania and New Jersey.

The Company employs approximately 125 persons, including in this figure officials, supervisors and office force.

II. THE ORGANIZATIONS INVOLVED

The Amalgamated is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all employees of the Company, except the clerical employees, salesmen, supervisors, and managerial and salaried employees.

The Molders is a labor organization affiliated with the American Federation of Labor. It admits to membership, pursuant to its Charter, as amended in 1934, all molders and other workers engaged in the production of castings within the City of Buffalo, New York, with the exception of stove-plate molders, who have a special local. Consequently, all employees of the Company, excluding clerical employees, salesmen, supervisors, and managerial and salaried employees, are eligible for membership in the Molders.

III. THE QUESTION CONCERNING REPRESENTATION

On various occasions since its organization the Amalgamated has held conferences with the Company in an effort to obtain recognition as the bargaining representative of employees of the Company. Such recognition has been denied.

The Company admits its refusal to recognize the Amalgamated but states it will recognize and bargain with the union which proves to have a majority of its production employees.

There is evidence in the record indicating that a number of the skilled employees of the Company became members of the Molders shortly after operations were begun at the plant in 1928. Efforts toward collective bargaining were thereafter made by the Molders and at one time apparently resulted in an oral agreement providing for a closed shop and governing wages and working conditions for the skilled employees. Evidence with respect to these negotiations and the oral agreement is vague and uncertain. It does indicate, however, that such negotiations were had as recently as 1934 or 1935, but the terms, duration, or present status of the oral agreement can not be ascertained from the record. It is certain that the Molders has been practically inactive since 1935. Also there is no evidence of any agreement with the Company respecting members of the Molders subsequent to the amendment of the Charter in 1934, but it is indicated that efforts toward reopening negotiations on behalf of the skilled employees are now in progress.

We find that a question concerning the representation of employees of the Company has arisen.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, in connection with the operations of the Company set forth 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 testimony adduced at the hearing indicates that the plant is not susceptible to division into departments. An iron foundry and a steel foundry are the two main divisions of the plant's production, but both of these foundries are in the same building and have the same superintendent, to whom all of the production employees within the plant are responsible. It was testified that employees are transferred throughout the plant as the plant's needs or their abilities may warrant. All of the employees of the Company, exclusive of the clerical employees, salesmen, supervisors, and managerial and salaried employees, are eligible for membership in both of the contending unions. At the hearing, it was stipulated by both unions that the appropriate unit and the unit which each union claims to represent and covers through eligibility, is "the entire plant except the supervisory, office help, and managerial employees."

While salesmen and salaried employees are not specifically excluded in this stipulation, it is clear from the record that the parties did not mean to include these two classes of employees within the appropriate unit.

In order to insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the employees of the Company, excluding the supervisory, clerical employees, salaried and managerial employees, and salesmen, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company's pay roll, consisting of four separate sheets, for the week ending July 28, 1937, was introduced in evidence. It represents a week when production was at an average. The pay roll was examined by the secretary of the Company, who testified that he had ascertained as accurately as possible the number of employees

of the Company as shown by it, excluding salaried and managerial employees, salesmen, supervisory and clerical employees, and that the number was 109.

In the latter part of July 1937, the first steps were taken in the creation and organization of the Amalgamated. On July 29, 1937, fifty-five employees of the Company signed cards of membership in the S. W. O. C. Since then 36 additional employees have become members, making a total of 91 employees, each of whom signed an original membership card designating the S. W. O. C., its agents or representatives, as his agency for the purposes of collective bargaining. The Amalgamated is such an agent or representative. It has obtained a charter, has held meetings and elected officers, and has selected a wage scale committee which has attempted to negotiate with the Company on behalf of its members. These 91 cards, after proper identification, were admitted in evidence and carefully checked in conjunction with said pay roll. Our examination indicates that all but one of the signers of said cards are within the unit which we have found to be appropriate. These cards were available for inspection and challenge by the Molders' representative and counsel for the Company. They were not challenged.

As heretofore related, the Molders had organized and bargained for the skilled employees in the Company plant. However, no membership cards were introduced by the Molders to show the number of present members who are employed by the Company. The evidence introduced by the Molders with respect to the number of such members is vague and uncertain. One witness testified that at one time there may have been 40 such active members, but due to the failure of some to pay dues the number of such active members apparently has materially decreased. Upon a failure to pay dues an active member is suspended from the benefits of the Molders and becomes an inactive member, subject to being reinstated upon making application for reinstatement. It is indicated also that a number of the original members of the Molders are no longer employed by the Company.

It appears that the number of the Molders' members, both active and inactive, who are employed by the Company could be ascertained only by reference to the books of the financial secretary. The hearing in the instant case was originally set for August 30, 1937, at which time the financial secretary was present and a motion for continuance of the hearing until the following day was made without objection and granted. On August 31, 1937, at the conclusion of the testimony a motion for a continuance was made on behalf of the Molders until such time as the financial secretary, who did not attend the hearing, could be present with his books and testify to the

number of active and inactive members of the Molders employed by the Company. The representative of the Molders at the time of making said motion for continuance stated that the financial secretary would testify that there were 14 active members and 22 inactive members of the Molders employed at the Company's plant. The motion was properly denied.

It is clear that the correct number of employees in the appropriate unit is 109. The Amalgamated has a corrected total of 90 membership cards authorizing it to act on behalf of the signers as their representative for purposes of collective bargaining.

The maximum claim of the Molders, made by its representative, is to 36 members, active and inactive. No evidence was introduced by the Molders to prove that all these inactive members are *now* employed by the Company and that they *now* prefer to be represented by the Molders. On the other hand, one of these, Joseph Slowinski, testified that he had ceased to pay dues and now prefers to be represented by the Amalgamated. The maximum number which the Molders claim might desire to be represented by them, therefore, is 35. Accordingly, the minimum number of members of the Amalgamated, not also possible members of the Molders, is 54. To this number must be added Slowinski. Thus, if every doubt is resolved in favor of the Molders, the Amalgamated, nevertheless, has a majority of the unit of 109.

Accordingly, we find that the Amalgamated has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. The Amalgamated is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and we will so certify.

CONCLUSIONS OF LAW

On 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 Bingham & Taylor Corporation, Buffalo, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of Bingham & Taylor Corporation, excluding the office force, salesmen, supervisors, and managerial and salaried employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) 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, 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 CERTIFIED that Local 2001 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, through the Steel Workers' Organizing Committee, has been designated and selected by a majority of all the employees of Bingham & Taylor Corporation, Buffalo, New York, excluding the clerical employees, salesmen, supervisors, and managerial and salaried employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Local 2001 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, through the Steel Workers' Organizing Committee, 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.