

In the Matter of BETHLEHEM STEEL CORPORATION AND BETHLEHEM
STEEL COMPANY and UNITED STEELWORKERS OF AMERICA, C. I. O.
DISTRICT 4

Case No. 3-R-639.—Decided October 6, 1943

Mr. John L. Wynne, of Bethlehem, Pa., for the Company.

Mr. Julian R. Bruce, of Buffalo, N. Y., for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., District 4, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company at its Lackawanna plant, at Lackawanna, Buffalo, and the township of Hamburg, New York, herein called the Company, and/or of Bethlehem Steel Corporation, herein called the Corporation, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on August 31, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the hearing the Company made a motion to dismiss the petition on the following grounds: (1) that the employees of the Company, in the bargaining unit which the Union has requested, are not employees within the meaning of the Act and (2) that the unit claimed by the Union is inappropriate. The Trial Examiner reserved ruling for the Board. The motion is denied for reasons hereinafter stated. The Corporation appeared specially and moved to dismiss the petition as to it, on the ground that the employees at the Company's Lackawanna plant are not employees of the Corporation. The Trial

Examiner reserved ruling on the motion for the Board. There is no evidence that the employees here involved are employees of the Corporation or that the Corporation is a necessary party to this proceeding. Accordingly, the motion to dismiss as to the Corporation is hereby granted.

The Trial Examiner's rulings made at the hearing are, free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company, a Pennsylvania corporation, is engaged at its Lackawanna plant, situated at Lackawanna, Buffalo, and the township of Hamburg, all in New York State, in the manufacture and production of various steel products. During the year 1942, the aggregate value of raw materials used by the Company at its Lackawanna plant was in excess of \$66,000,000, of which more than 85 percent was shipped from points outside the State of New York. During the same period, the Company manufactured at its Lackawanna plant finished products valued in excess of \$119,000,000, of which more than 80 percent was shipped to points outside the State of New York.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, District 4, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union sent a letter to the Company in the early part of July 1943, requesting recognition as the exclusive bargaining agent for the Company's employees involved herein. The Company failed to reply to the request.

A statement prepared by the Regional Attorney, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees¹ in the unit hereinafter found appropriate.²

¹For reasons indicated below, we find that the employees involved herein are employees within the meaning of the Act.

²The Regional Attorney's statement shows that the Union submitted 66 membership cards, 63 of which bear apparently genuine signatures and names of persons whose names appear on the Company's pay roll of August 18, 1943; there are 117 employees in the appropriate unit. All the cards were dated in April, May, and August, 1943.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Union seeks a unit composed of all employees in the Order Department at the Company's Lackawanna plant, which department bears the symbol AH, excluding the superintendent, assistant superintendent, assistants to the superintendent, chief steel distributor, chief mill provider, and chief clerks. The Company contends that the employees in the Order Department are not employees within the meaning of the Act, since their duties are managerial and confidential. It further contends, in the event the Board finds that they are employees within the meaning of the Act, that the unit which the Union seeks is inappropriate in that it does not exclude steel distributors, mill providers, chief shipper, shipping foremen, chief teletype operator, chief biller, billers, chief entry clerk, O. T. D. combination man, and correspondence clerk.

The Order Department of the Lackawanna plant consists of approximately 120 employees and is a part of the Company's Sales Department, which is located at Bethlehem, Pennsylvania. Its functions are to receive all orders to be filled at the Lackawanna plant; to schedule production at the open hearth furnaces and mills at the plant; and to bill and ship the finished material to customers. From the orders received, the mill providers make up "cogging orders" which contain the amount of steel to be made to meet the mill schedules, the specifications as to chemical analysis, the time the steel is to be made, and other details. The "cogging orders" are given to the steel distributors, who determine therefrom the operations of the furnaces and mills with respect to the amount and type of steel to be made. It is also the duty of mill providers and steel distributors to determine whether or not an order shall be filled at the Lackawanna plant or at other plants of the Company. Once the manufacture of an order is completed, it becomes the function of the shipping section of the Order Department to bill the customer and route the transportation of the completed product to its destination. The record reveals that all employees of the Order Department have access to the orders received at the plant.

The Company contends, since the orders contain information as to the price and specifications of its products, as well as other confidential information, and since the duties of several of the employees in question are managerial in that they determine the manner in which the mills operate, that all the employees of its Order Department can be classed as confidential and managerial employees, and as such they

should not be deemed employees within the meaning of the Act. We find no merit in the Company's contentions. The information which the employees of the Order Department may possess in no instance relates directly to the problem of labor relations. The possession of important information is of itself insufficient to justify exclusion from the right to collective bargaining.³ While it is true that management may have partially delegated certain duties to several of the employees in question, this does not mean that such employees are to be considered as a part of management or should not be regarded as "employees" within the meaning of the Act. We find that the employees in question are employees within the meaning of the Act.

In its alternative contention, the Company urges that the following are supervisory employees and should be excluded from the unit, whereas the Union contends that they are non-supervisory and should be included.

Mill providers: As stated above these employees prepare "cogging orders." To prepare these orders they must have a full knowledge of mill operations. While they instruct the mill superintendent as to the type and amount of steel to be made, and have authority to fix and change mill schedules, they have no supervisory authority. We shall, therefore, include them in the unit.

Steel distributors: The function of the steel distributors, all of whom are required to have at least three years experience, is to so supervise and direct the operations of the open hearth furnaces as to keep the blooming mills operating at the highest productive efficiency. They have no supervisory authority. We shall include them in the unit.

Chief shipper: This employee has between 25 and 27 employees under his supervision and is responsible for all work pertaining to the billing and manifesting of shipments from the plant. He has the authority to recommend the disciplining and promotion of employees under his supervision. We shall exclude him from the unit.

Shipping foremen: These employees are under the supervision of the chief shipper and, in turn, have direct supervision over three or four typists and clerks. The superintendent of the plant testified that they have only limited authority and cannot effect any change in the status of the employees under their supervision. They shall be included in the unit.

Teletype operators: The duties of the three teletype operators in this department are to receive all teletype messages coming into the plant, to distribute such teletypes to the persons to whom they are

³ See *Matter of Creamery Package Manufacturing Company (Lake Mills Plant)*, 34 N. L. R. B. 108.

addressed, and to send all teletypes from the plant. The Company contends that the teletype operators should be excluded because they may acquire knowledge respecting the Company's labor relations. We find no merit in this contention. It does not appear that the teletype operators in the normal course of their duties have obtained information of a sufficiently confidential character relating to labor policy to warrant their exclusion. We shall, therefore, include the teletype operators in the unit. The chief teletype operator, however, has supervisory authority and he shall be excluded from the unit.

Billers: These employees are located in the strip mill and central order division and bill all incoming orders and outgoing shipments. They furnish the railroads with bills of lading to move the cars to the railroad connections and contact railroads for permits now required to move cars which are not fully loaded. The Company claims that billers have typists under their supervision but the record does not disclose that they have the authority to effect changes in the status of those employees under their supervision. We shall, therefore, include them in the unit.

Chief biller: This employee supervises the work of 15 people, including several billers, who manifest and bill all cars emanating from the strip mill. He is under the supervision of the plant superintendent and has the authority to recommend discipline and wage increases. We shall exclude him from the unit.

Chief entry clerk: The duties of the chief entry clerk are to receive orders coming to him in the form of teletype messages from the various sales offices of the Company, and to check these orders to see that they contain the required information. He has 4 employees under his supervision and has the authority to recommend the disciplining and promotion of these employees. We shall, therefore, exclude him from the unit.

O. D. T. combination man: This position was created in recent months due to the regulation of the Office of Defense Transportation relating to the unloading and shipping of railroad cars. It is his duty to determine if the railroad cars leaving the plant are loaded in accordance with the regulations of the above named office. He has no supervisory authority. We shall include him in the unit.

Correspondence clerk: The duty of the correspondence clerk is to supply the Sales Department and the various sales offices of the Company with information as to when customers' orders are to be shipped. He has four or five employees under his supervision and has the authority to recommend discipline, promotions, and rate changes as to these employees. We shall exclude him from the unit.

We find that all employees in the Order Department at the Company's Lackawanna plant, which department bears the symbol AH, excluding the superintendent, assistant superintendent, assistants to the superintendent, chief mill provider, chief steel distributor, chief clerks, chief shipper, chief teletype operator, chief biller, chief entry clerk, correspondence clerk, private secretary to Superintendent of the Order Department, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bethlehem Steel Company, Lackawanna, Buffalo, and the township of Hamburg, New York, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Steelworkers of America, C. I. O., District 4, for the purposes of collective bargaining.

ORDER

IT IS HEREBY ORDERED that the petition of the United Steelworkers of America, C. I. O., District 4, insofar as it alleges that a question affecting commerce has arisen concerning the representation of employees of Bethlehem Steel Corporation, be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision, Direction of Election and Order.