

In the Matter of ST. JOSEPH LEAD COMPANY AND MINE LAMOTTE CORPORATION and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, CIO, FOR ITSELF AND ON BEHALF OF LOCAL 648

Case No. 14-R-760.—Decided November 16, 1943

Mr. Parkhurst Sleeth, of Bonne Terre, Mo., and *Mr. Wallace Cooper*, of St. Louis, Mo., for the Company.

Mr. Victor B. Harris, of St. Louis, Mo., *Mr. George Cole*, of Crystal City, Mo., and *Mr. Herman Butcher*, of Desloge, Mo., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Union of Mine, Mill & Smelter Workers, CIO, for itself and on behalf of its Local 648, herein collectively called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of St. Joseph Lead Company and Mine Lamotte Corporation, Bonne Terre, Missouri, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at Farmington, Missouri, on October 25, 1943. The Companies 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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 COMPANIES

St. Joseph Lead Company, a New York corporation with its executive offices located in New York City and its principal offices and place
53 N. L. R. B., No. 119.

of business located at Bonne Terre, Missouri, is engaged in the mining, milling, and smelting of lead. During the year 1942, St. Joseph Lead Company purchased raw materials valued in excess of \$100,000, of which more than 50 percent was shipped to its plants in Missouri from points outside the State of Missouri. During the same period the Company sold finished products valued in excess of \$1,000,000, of which approximately 95 percent was delivered from its plants in Missouri to points outside the State of Missouri. The finished products of the Company consisted of more than 80,000 tons of lead.

Mine Lamotte Corporation, a Missouri corporation with its principal offices and place of business located at Bonne Terre, Missouri, is engaged in the mining and milling of lead. During the year 1942, Mine Lamotte Corporation purchased raw materials in excess of \$100,000, of which more than 50 percent was shipped to its plants in Missouri from points outside the State of Missouri. During the same period, Mine Lamotte Corporation sold finished products valued in excess of \$1,000,000, of which approximately 90 percent was shipped from its plants in Missouri to points outside the State of Missouri. The finished products of Mine Lamotte Corporation consisted of more than 5,000 tons of lead pigment. All of the finished products of the Mine Lamotte Corporation are sold to the St. Joseph Lead Company within the State of Missouri, which in turn sends them to its smelters located at Herculaneum, Missouri, and to the Federal smelter located in Federal, Illinois. Both Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill & Smelter Workers and its Local 648 are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Companies have refused to recognize the Union as the exclusive bargaining representative of its employees until the latter has been certified by the Board in an appropriate unit.

A statement of the Regional Director introduced into evidence indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹ The Regional Director reported that the Union submitted 2,100 designations in support of its allegation that it represented 70 percent of the employees in the unit which it contends is appropriate; that a spot check of 200 of these designations indicated that all bore the apparently genuine original signatures and that 192 bore the names of persons appearing upon the pay rolls of either Mine Lamotte Corporation or St. Joseph Lead Company for the period ending August 29, 1943; that the Mine Lamotte Corporation pay roll contained the names of approximately 171 employees within the appropriate unit; and that the St. Joseph Lead Company pay roll contained the names of approximately 2,795 employees within the appropriate unit.

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

IV. THE APPROPRIATE UNIT

The Union seeks a unit composed of all hourly paid production and maintenance employees of the Companies at its various operations located at or near Bonne Terre, Leadwood, Desloge, Flat River, and Fredericktown, Missouri, including construction foremen, track foremen, core inspectors, core estimators, mail car drivers, samplers, stock clerks, and watchmen, but excluding diamond drill foremen, shift foremen, U. G. maintenance foremen, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or effectively recommend such action, office and clerical employees, salaried employees, chemists, and assistant chemists, bit setters, caretaker of the general manager's residence, janitors and assistant janitors, laboratory helpers, mine safety maintenance men, pattern makers, militarized watchmen, and telephone operators. The Companies agreed generally with the Union as to the appropriateness of the unit sought by the Union herein, but disagree with respect to the inclusion of certain fringe groups hereinafter discussed seriatim.

The record discloses no prior history of collective bargaining with respect to the plants of the Companies herein involved, and that no other labor organization has made any claims of representation concerning the employees herein. The Companies are closely linked, having a common president, secretary, treasurer, and general manager. The management of Mine Lamotte Corporation is vested in the St. Joseph Company. Both Companies maintain and occupy a common principal office located at Bonne Terre, Missouri, and use a common purchasing agent. There is an integration of the production processes of both, in that the ore concentrate produced by Mine Lamotte Corporation is sent to the smelter of the St. Joseph Lead Company. While there is little interchange of employees between the two companies, similar working conditions and wages prevail at each. Furthermore, a unity of labor policy exists at both Companies, determination of which is made by the common general manager.

The operations of the St. Joseph Lead Company consist of four divisions, each of which is comprised of mines, mills, and general shops. The operations of the Mine Lamotte Corporation consist of three mines, one mill, and one general shop. Below the common general manager in the supervisory hierarchy are two general superintendents, one of which is responsible for both the Federal division of the St. Joseph Lead Company and the properties of the Mine Lamotte Corpo-

ration. In view of the foregoing, and in accordance with the agreement of the parties, we find that a multi-employer, multi-divisional unit is appropriate.

The following classifications of employees are in dispute:

Janitors and assistant janitors. The Union seeks to exclude these employees on the ground that they perform their duties in and about the office buildings and have no direct contact with the production processes of the Companies, whereas the Companies contend that they should be included within the unit. We are of the opinion that since these employees work apart from the production and maintenance employees, and appear to have little community of interest with such employees, they should be excluded from the unit.²

Construction foremen. The Union would include this classification of employees within the unit, whereas the Companies desire its exclusion on the ground that the employees engaged therein are supervisory. The record discloses that these employees supervise approximately 30 workers, and have authority to recommend disciplinary action and promotion. We agree with the contention of the Companies that these employees are supervisors and, in accordance with our regular policy, shall exclude them from the unit.

Core inspectors and core estimators. The Companies object to the inclusion within the unit of employees engaged in these classifications on the ground that they are technical and confidential employees, whereas the Union, contending that they are regular production employees, seeks to include them. The core inspectors examine "cores" for the purpose of determining the amount of lead concentrate therein, and make records of this information. The core estimators supplement the core inspectors and perform similar work. While both classifications require a high degree of skill and experience, neither requires technical training. Furthermore, the employees in neither classification have access to confidential information concerning personnel policies or labor relations of the Companies. Under these circumstances we shall include them within the unit.

Mail car drivers. These employees carry the mail and pay-roll checks between the offices of the Companies and occasionally transport passengers between the various plants. The Companies seek the exclusion of this classification from the unit on the ground that the employees therein are confidential, whereas the Union seeks the inclusion of these employees. The record discloses no evidence that these employees have access to confidential information pertaining to labor relations or personnel problems; we shall include them within the unit.

Watchmen. The Companies employ approximately 25 persons in this classification on an hourly paid basis, the duties of which are

² See *Matter of Todd-Bath Iron Shipbuilding Corporation*, 45 N. L. R. B. 1367.

those regularly assigned to watchmen. At the present time these employees are not members of the auxiliary military police; it is anticipated by the Companies, however, that sometime in the future these employees will be militarized. The Companies seek the exclusion of these employees, whereas the Union would include them. We are of the opinion that since these employees are at the present time non-militarized, they may properly be included within the unit; we shall therefore include them. However, our finding in this respect applies only so long as they retain their non-militarized status.³

Track foremen. The Companies seek the exclusion of the employees engaged in this classification on the ground that they are supervisors, whereas the Union seeks their inclusion. The record discloses that each of these employees directs the work of approximately 10 men; that they have the power to recommend disciplinary action with respect to those employees whom they supervise; and that they are paid approximately \$1 per day more than these employees. Under these circumstances, we are of the opinion that these employees are supervisors and shall exclude them from the unit.

In accordance with the foregoing, we find that all hourly paid production and maintenance employees of the Companies at their various operations located at or near Bonne Terre, Leadwood, Desloge, Flat River, and Fredericktown, Missouri, including core inspectors, core estimators, mail car drivers, non-militarized watchmen, mine surveyor helpers, samplers, substitute shift foremen, and stock clerks, but excluding pattern makers, construction foremen, track foremen, diamond drill foremen, U. G. maintenance foremen, shift foremen, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, pattern makers, office and clerical employees, salaried employees, mine maintenance safety men, militarized guards and watchmen, bit setters, chemists and assistant chemists, laboratory helpers, telephone operators, janitors and assistant janitors working in and about the central office buildings, and the caretaker of the general manager's residence, 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 the Direction of Election

³ See *Matter of The Texas Company*, issued November 5, 1943, 53 N. L. R. B. 436.

herein, subject to the limitations and additions set forth in the Direction.⁴

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 the 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 St. Joseph Lead Company and Mine Lamotte Corporation, Bonne Terre, Missouri, 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 Fourteenth 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 pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Union of Mine, Mill & Smelter Workers, CIO, for itself and on behalf of Local 648, for the purposes of collective bargaining.

Mr. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

⁴The Union requested that it be designated on the ballot as "International Union of Mine, Mill & Smelter Workers, CIO, for itself and on behalf of Local 648." This request is hereby granted.