

In the Matter of ELECTRO METALLURGICAL COMPANY and BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

In the Matter of ELECTRO METALLURGICAL COMPANY and UNITED STEELWORKERS OF AMERICA, CIO

Cases Nos. 8-R-1264 and 8-R-1277, respectively.—Decided December 22, 1943

Mr. William C. Treanor, of New York City, and *Mr. Harold Reagan*, of Ashtabula, Ohio, for the Company.

Mr. A. D. Penfold, of Cleveland, Ohio, for the Brotherhood.

Mr. James B. Griffin, of Youngstown, Ohio, for USA.

Messrs. R. J. Jamieson and *Anthony J. Lang*, of Cleveland, Ohio, for the AFL.

Mrs. Robert Silagi, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Brotherhood of Locomotive Firemen and Enginemen, herein called the Brotherhood, and by United Steelworkers of America, CIO, herein called the USA, each alleging that a question affecting commerce had arisen concerning the representation of employees of Electro Metallurgical Company, Ashtabula, Ohio, herein called the Company, the National Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Ashtabula, Ohio, on November 3, 1943. The Company, the Brotherhood, USA, and American Federation of Labor,¹ herein called the AFL, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine

¹ Prior to the hearing an interest in this proceeding was manifested by the International Union of Operating Engineers, A. F. of L. At the hearing, however, the American Federation of Labor moved to intervene, specifically withdrawing all craft union interests previously shown by any of its affiliates.

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 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

Electro Metallurgical Company is a West Virginia corporation which owns and operates a number of plants throughout the country. This proceeding is concerned solely with the plant located in Ashtabula, Ohio, owned by the Defense Plant Corporation but operated by the Company. This plant commenced operations in June 1943 and manufactures ferro alloys and calcium carbide. The raw materials used in the Ashtabula plant are quartzite chrome ore, limestone, lime, coal, coke, and scrap steel. The material to be used per year exceeds \$1,000,000 in value, about half of which will be received from points outside the State of Ohio. The total value of the production for one year will exceed \$1,000,000. More than half of the products will be shipped from Ashtabula to points outside the State of Ohio. The Company's entire production is destined for use in the war.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Brotherhood of Locomotive Firemen and Enginemen, and American Federation of Labor, are labor organizations admitting to membership employees of the Company.

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

III. THE QUESTIONS CONCERNING REPRESENTATION

During August 1943, the AFL informed the Company that it represented a majority of the Company's employees and requested recognition as the collective bargaining agent on their behalf. During the late summer and early autumn of 1943, both the USA and the Brotherhood sought recognition as the collective bargaining representative of certain employees. The Company has declined to grant recognition to any union until it is certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the USA represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The USA, AFL, and Company are in substantial agreement that the appropriate unit should be comprised of all production and maintenance employees, but excluding foremen, superintendents, general office, clerical, confidential, and plant-protection employees. From this all-inclusive unit, the Brotherhood seeks to carve out a unit composed of engine service men. The USA and the Company vigorously object to splitting the industrial unit in any manner, whereas the AFL has no objection to the establishment of a unit such as the Brotherhood seeks. As a further objection to a unit of engine service men, the Company alleges that the Brotherhood discriminatorily excludes from its membership certain employees because of their race or color.³

The Company's plant is located on the outskirts of the city of Ashtabula, where it covers 168 acres. Within the boundaries of the plant there are approximately 5.6 miles of railroad trackage. As of the date of the hearing, the Company employed about 1,000 employees, 875 of whom fall within the categories sought to be represented by the USA

² The Field Examiner reported that the USA submitted 369 membership cards, 363 of which bore apparently genuine original signatures; that the names of 268 persons appearing on the cards were listed on the Company's pay roll of September 11, 1943, which contained the names of 680 employees in the appropriate unit; and that the cards were variously dated between June and October 1943.

International Union of Operating Engineers, apparently on behalf of the AFL, submitted 108 membership cards all of which bore apparently genuine original signatures. The names of 76 persons appearing on the cards were listed on the Company's aforesaid pay roll. The cards were dated between June and August 1943.

The Brotherhood submitted 6 application for membership cards all of which bore apparently genuine original signatures. All cards bore the names of persons on the Company's September 11, 1943, pay roll. Said pay roll contains the names of 11 persons within the unit which the Brotherhood alleges to be appropriate. The cards were dated in July and August 1943.

At the hearing the USA submitted further evidence purporting to show an increase in its membership throughout the plant and in the unit claimed to be appropriate by the Brotherhood.

³ Under the terms of its contract with the Defense Plant Corporation for the operation of the Ashtabula plant, the Company is required to obey Executive Orders Nos 9346 and 8802 which prohibit discrimination in employment or union membership against persons engaged in war industries because of their race, creed, color, or national origin. Since the Brotherhood, by its constitution, limits membership to white born persons, the Company contends that it cannot be certified as the collective bargaining representative of the employees in the unit it desires. If the Brotherhood is certified, so the Company argues, and gets the closed-shop agreement which is universal in the railroad industry, the Company will be prevented from hiring Negroes as engine service men, or upgrading them, thus compelling the Company to discriminate against such employees in violation of the President's order.

and the AFL. The Brotherhood's proposed unit totals only 11 men who hold jobs as railroad engineers, firemen, and hostlers. The engine service men are part of the Company's traffic and raw materials department which includes a group of 69 employees in many classifications, e. g., conductors, switchmen, locomotive crane operators, machine operators, truck drivers, laborers, dispatchers, and strawbosses, in addition to the engineers, firemen, and hostlers.

The plant is a highly integrated enterprise, no one department of which could operate without the close and constant assistance of all others. In this set-up, the traffic and raw materials department occupies a strategic position. It acts as an intermediary between the New York Central Railroad which delivers the raw materials to and removes the finished products from the plant, and the actual production processes. Railroad cars containing the heavy, bulky raw materials are delivered to the plant where they are taken over by the traffic and raw materials department and moved to the furnaces wherein are produced the ferro alloys. Transportation of the raw materials and the finished products is accomplished by means of locomotives and cranes. All switching of locomotives and freight cars is done within the plant itself and no employees of the traffic and raw materials department move freight trains on the tracks of the interstate carrier.

The plant is managed through the office of a single general superintendent. There is a single "supervisor of service" who oversees employment and general relations of all employees. Wage rates and conditions of employment are centrally determined. The traffic and raw materials department is supervised by a department head who also has jurisdiction over the engine service men. There is no separate supervision for the employees whom the Brotherhood seeks to represent. Wage rates, working conditions and training for engine service jobs are the same or comparable to those for jobs held by other skilled workers in the traffic and raw materials department, and throughout the plant generally.

The Company elicited evidence that its railroad switching equipment, although standard, is not as complicated, nor does it maintain an elaborate signal system such as is used by interstate carriers. Thus, there is no block system on the tracks within the plant and a switchman precedes the locomotives at all times. The Company likewise asserts that it trains its own employees and upgrades them. Hostlers, it claims, are trained in 6 to 8 weeks and firemen and engineers in but a few weeks more. This is substantiated by the evidence that only 3 of the 11 engine service men have had any previous railroad experience, and the experience of one of the 3 was acquired 20 years ago. The remaining 8 engine service men have apparently been recruited from other jobs in the plant or have been hired as unskilled employees, and

have been trained on the job. In the event of a slackening of production compelling a reduction in the number of engine service men, the Company intends to transfer them back to their old or other jobs.

Since the Ashtabula plant has been in existence for only half a year it has no history of collective bargaining; however, the Company operates 13 similar plants located throughout the United States and, according to the undisputed testimony of the Company's supervisor of industrial relations, every union contract in those plants was negotiated on the basis of an industrial unit.⁴ Where, as here, there is no history of collective bargaining, the form which collective bargaining has taken in other plants of an employer is regarded by the Board as a significant factor in determining the appropriate unit.⁵ Moreover, the history of collective bargaining throughout the steel industry generally affords ample precedent for the finding that an industrial unit is appropriate.⁶ We note further that the engine service men are an integral part of a department which is more intimately related to production of ferro alloys than to railway transportation.⁷ Under all these circumstances we shall retain the traditional bargaining unit in this industry and shall therefore include the engine service men in the comprehensive unit. In view of our determination to dismiss the petition of the Brotherhood on the grounds indicated above, we find no occasion to rule on the issue of the alleged discrimination.⁸

We find that all production and maintenance employees of the Company, including engine service men, but excluding general office, clerical, confidential, and plant-protection employees, foremen, superintendents, and any other 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 pay-

⁴ See *Matter of Electro Metallurgical Company et al*, 45 N. L. R. B. 335, 339; *Matter of Electro Metallurgical Company*, 51 N. L. R. B. 37

⁵ See National Labor Relations Board, Third Annual Report, p. 161; also *Matter of Bridgeport Brass Ordnance Plant*, 45 N. L. R. B. 84, and *Matter of National Lead Company (Titanium Division)*, 35 N. L. R. B. 1075.

⁶ See *Matter of Tennessee Coal, Iron and Railroad Company*, 39 N. L. R. B. 617, citing voluminous economic data; *Matter of Laclede Steel Company*, 49 N. L. R. B. 1116; *Matter of American Steel Foundries*, 51 N. L. R. B. 1024.

⁷ See *Matter of Tennessee Coal, Iron and Railroad Company, Open Hearth Dept. of Ensley Works*, 39 N. L. R. B. 626.

⁸ See, however, *Matter of U S Bedding Company*, 52 N. L. R. B. 382, and *Matter of Bethlehem-Alameda Shipyard, Inc., et al.*, 53 N. L. R. B. 999

roll period immediately preceding the date of the 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Electro Metallurgical Company, Ashtabula, Ohio, 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 Eighth 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 they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by the American Federation of Labor, for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Electro Metallurgical Company, Ashtabula, Ohio, filed by Brotherhood of Locomotive Firemen and Enginemen, be, and it hereby is, dismissed.