

In the Matter of BUCYRUS-ERIE COMPANY and UNITED STEELWORKERS  
OF AMERICA, C. I. O.

*Case No. 13-R-2109.—Decided January 25, 1944*

*Lines, Spooner & Quarles*, of Milwaukee, Wis., by *Mr. Leo Mann*,  
for the Company.

*Mr. W. O. Sonnemann* and *Mr. Walter J. Burke*, of Milwaukee, Wis.,  
and *Mr. Claude L. Smith*, of Cudahy, Wis., for the C. I. O.

*Mr. M. A. McLaughlin*, of Milwaukee, Wis., and *Mr. A. M. Glad-*  
*felder*, of South Milwaukee, Wis., for the E. M. B. U.

*Mr. Armin Uhler*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Bucyrus-Erie Company, South Milwaukee, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earl S. Bellman, Trial Examiner. Said hearing was held at Milwaukee, Wisconsin, on December 9, 1943. The Company, the C. I. O., and Excavating Machinery Builders' Union of South Milwaukee, herein called the E. M. B. U., appeared and participated. All parties 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 COMPANY

Bucyrus-Erie Company is a corporation with its principal office and place of business at South Milwaukee, Wisconsin. The Company also

operates plants at Erie, Pennsylvania, at Evansville, Indiana, and, through a wholly owned subsidiary, at Chicago, Illinois. At these plants the Company manufactures and assembles heavy excavating machinery and gun carriages, which annually exceed 20 million dollars in value and all of which are destined for interstate commerce. The value of the raw materials used by the Company exceeds 10 million dollars per year, and 95 percent thereof is shipped to the various plants from States other than those in which they are located. The Company employs some 2,300 employees at its South Milwaukee plant, the only one with which these proceedings are concerned.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, and Excavating Machinery Builders' Union of South Milwaukee, unaffiliated, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 29, 1943, the C. I. O. requested recognition as the exclusive bargaining representative of the Company's production and maintenance employees. The Company refused so to recognize the C. I. O. unless certified by the Board.<sup>1</sup>

A statement prepared by a Field Examiner and introduced in evidence indicates that the C. I. O. represents a substantial number of the Company's employees in the unit herein found appropriate.<sup>2</sup>

<sup>1</sup>The C. I. O. and its predecessor, Steel Workers Organizing Committee (S. W. O. C.), had previously sought to establish themselves as bargaining agents of the Company's employees in competition with the E. M. B. U. Thus, in May 1937, the S. W. O. C., after petitioning the Board for certification (Case No. 12-R-28), succeeded in a consent election in which E. M. B. U. participated. In November 1939, E. M. B. U. instituted representation proceedings before the Wisconsin Employment Relations Board and prevailed over S. W. O. C. in the ensuing election. Subsequently E. M. B. U. entered into and maintained contractual relations with the Company up to the time of the hearing in the present case. Meanwhile, in May 1943, the C. I. O. requested recognition which was refused by the Company on account of the existence of its contract with E. M. B. U. The C. I. O. then filed a petition for certification with the Board (Case No. 13-R-1872) which was dismissed on July 26, 1943.

No claim has been made by either the Company or the E. M. B. U. that the contract in force between them at the time of the institution of these proceedings precludes the existence of a question concerning representation. Nor do we find that the contract which now subsists could in any event constitute a bar to these proceedings. On April 20, 1943, the Company and E. M. B. U. completed negotiations for the renewal of their previous agreement and entered into a new contract to be effective retroactively from January 1, 1943, until January 1, 1944, and thereafter until terminated by either party upon 30 days' written notice. The contract, therefore, has now run for more than its original 1-year period and is terminable by either party upon notice. See *Matter of Phelps-Dodge Refining Corporation*, 40 N. L. R. B. 1159, 1161, and cases cited there.

<sup>2</sup>The Field Examiner reported that the C. I. O. submitted 740 membership application cards bearing apparently genuine original signatures; that 640 of those cards were dated

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 Act.

#### IV. THE APPROPRIATE UNIT

The parties are in agreement as to the general scope of the unit and request that it be found to include all production and maintenance employees at the Company's South Milwaukee plant. The contention of the parties is thus in keeping with the bargaining history of the Company which discloses that past contractual relations and previous elections consistently had reference to such a plant-wide unit.

The parties have also agreed that janitors, powerhouse, stock and storeroom employees, and group leaders should be classified together with production and maintenance employees. The Company's employees within these categories have heretofore been covered by the contracts with the E. M. B. U. and we shall include them in the unit.<sup>3</sup>

The parties desire the exclusion from the unit of assistant foremen and all supervisory employees of higher rank, general administrative, office, and confidential employees,<sup>4</sup> technically trained engineers, rate setters,<sup>5</sup> "Victory Shift" workers,<sup>6</sup> armed guards,<sup>7</sup> registered nurses, the Credit Union secretary,<sup>8</sup> and Bucyrus Club employees.<sup>9</sup> Except as to the armed guards, the record indicates that the foregoing employees had been omitted from bargaining negotiations be-

between January and December 1943, and bore the names of employees on the Company's pay roll of November 15, 1943; and that on the latter date there were 1471 employees in the unit alleged to be appropriate by the C. I. O. The Field Examiner further reported that the E. M. B. U. did not submit any membership cards but in support of its representation claim relied upon its contract with the Company (see footnote 1, *supra*).

<sup>3</sup> The record shows that the group leaders, or working foremen, are employees who by virtue of their experience instruct new employees and are entrusted with some responsibility for the proper completion of jobs assigned to them and the men with whom they are working. They have no disciplinary authority or power to recommend changes in the status of the employees in their respective groups.

<sup>4</sup> The record specifically mentions the secretary to the assistant to the president as a confidential employee.

<sup>5</sup> Employees in this group are also known as time-study men.

<sup>6</sup> Employees in this classification are part-time, temporary employees with full-time employment elsewhere. The time spent in the Company's plant by a majority of them has been less than the permissible maximum of 24 hours per week. Victory Shift employees upon being hired waive group insurance benefits and other privileges enjoyed by regular employees.

<sup>7</sup> This classification embraces 12 of the Company's former watchmen who at the time of the hearing were undergoing military training in order to perform their protective duties in and about the plant as uniformed and armed military auxiliaries.

<sup>8</sup> The entire time of this employee is devoted to Bucyrus Credit Union matters, and the cost of his services is borne in equal parts by the Company and the Credit Union.

<sup>9</sup> This group is in charge of a building and recreational facilities which the Company operates, at a distance from the plant, for the benefit of employees who pay the required dues of 50 cents per month.

tween the Company and the E. M. B. U. Insofar as the armed guards are concerned, we have recently pointed out that, while militarization cannot deprive plant-protection employees of the benefits of the Act, the segregation of such employees for bargaining purposes from non-militarized groups is desirable.<sup>10</sup> In view of the foregoing circumstances we shall exclude from the unit the employees contemplated by the agreement which the parties expressed at the hearing.

The contentions of the parties diverge with respect to certain other groups of employees. The Company and the E. M. B. U. ask for the inclusion while the C. I. O. desires the exclusion of watchmen, shop clerks, timekeepers, stock chasers, and draftsmen and miscellaneous employees in the engineering department. The C. I. O.'s position is based upon the allegation that the functions of these employees are either of a technical, clerical, or confidential nature.

*Watchmen.* The Company's plant-protection employees have recently been incorporated in the military police with the exception of four watchmen whose ages precluded their participation in military training. These watchmen continue to perform their usual duties connected with keeping a check on the physical condition and safety of the plant. They are not concerned with the conduct of the employees except insofar as violations of the criminal laws and of rules restricting their presence to certain areas are concerned. According to the record, and contrary to the C. I. O.'s assertion, the watchmen have no confidential duties; nor have they in the past been excluded as confidential employees from the operation of the express terms of the Company's contract with the E. M. B. U. We shall therefore include watchmen in the unit.

*Shop clerks, stock chasers, timekeepers.* These employees have this in common: they perform clerical duties by way of keeping records of varying kinds. *Shop clerks* are chiefly concerned with the order in which castings are to move through the machine shop for processing, and with the delivery of stock and store orders. *Stock chasers* keep account of the location of materials and parts which are in process of manufacture and assembly. By furnishing necessary information to the responsible employees they aid in expediting the timely movement of materials from machine to machine and from department to department. At times they give manual assistance in transporting materials from one location to another, although this is an entirely voluntary aspect of their work. *Timekeepers* record the aggregate time spent on each piece of work. For this purpose they collect the time cards of the individual employees in the various shops and depart-

<sup>10</sup> *Matter of Dravo Corporation*, 52 N. L. R. B. 322; see also *Matter of Consolidated Steel Corporation, Ltd.*, 51 N. L. R. B. 333.

ments and allocate the numbers of hours to the respective jobs indicated thereon. It is clear, therefore, that the employees in the three groups who collect information in the several manufacturing departments and record it in their respective departmental offices are, unlike the general clerical staff, closely associated with the production employees. Moreover, each of these groups has heretofore been within the unit in which the E. M. B. U. has bargained with the Company, and to exclude them now would deprive these employees of the benefits they have enjoyed in the past. In weighing the contentions of the parties we must take into account the fact that the petitioner requests the inclusion of all stock and store employees some of whom, much as the employees in the above groups, are exclusively concerned with the keeping of records in their department. We shall include shop clerks, stock chasers, and timekeepers in the unit.

*Draftsmen and miscellaneous engineering department employees.* The Company's engineering department is staffed with technically trained employees on the one hand, and draftsmen, photostat, blueprint machine and cutter operators, and vault and file clerks on the other hand. Technically trained engineers, who are excluded from the unit by agreement of the parties, are salaried employees and constitute the only group in the engineering department which has not been embraced in the unit covered by the contracts between the Company and the E. M. B. U. The draftsmen and auxiliary personnel are hourly paid employees. The former execute drawings and tracings from designs and data furnished by the engineers; the latter perform the usual functions of making, cutting, and filing blueprints and photostatic copies of tracings. The requisite training, the nature of work, and the mode of compensation of these employees distinguish them sufficiently from the engineers to warrant differential treatment for bargaining purposes. We are unable to find sufficient merit in the C. I. O.'s request for their exclusion to justify our depriving these employees of the benefits of collective bargaining which they have enjoyed in the past, and we shall therefore include them in the unit.

We find that all production and maintenance employees of the Company at its South Milwaukee, Wisconsin, plant, including janitors, powerhouse, stock and storeroom employees, group leaders, watchmen, shop clerks, stock chasers, timekeepers, and draftsmen and miscellaneous engineering department employees, but excluding general administrative, office, and confidential employees (including the secretary to the assistant to the president), technically trained engineers, rate setters, "Victory Shift" workers, armed guards, registered nurses, the Credit Union secretary, and Bucyrus Club employees, assistant 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, 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-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 Bucyrus-Erie Company, South Milwaukee, Wisconsin, 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 Thirteenth 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 election, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by Excavating Machinery Builders' Union of South Milwaukee, for the purposes of collective bargaining, or by neither.