

In the Matter of A. N. EATON METAL PRODUCTS COMPANY, and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 19-R-1237.—Decided February 24, 1944

Mr. C. A. McIntyre, of Billings, Mont., for the Company.

Mr. George W. Haycock, of Salt Lake City, Utah, and *Mr. Sylvester Graham*, of Helena, Mont., for the C. I. O.

Mr. Dave Swanson, of Minneapolis, Minn., for the A. F. L.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, affiliated with the C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of A. N. Eaton Metal Products Company, Billings, Montana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Ogden W. Fields, Trial Examiner. Said hearing was held at Billings, Montana, on January 26, 1944. The Company, the C. I. O., and International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the A. F. of L., herein called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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

A. N. Eaton Metal Products Company, a Montana corporation, is engaged in the manufacture of steel products at Billings, Montana.

¹ United Brotherhood of Welders, Cutters and Helpers of America, was served with notice of the hearing but failed to appear.

During the period from November 1, 1942, to October 31, 1943, the Company purchased raw materials consisting principally of steel plate and structural iron, valued in excess of \$127,000, for use at its Billings plant, all of which was shipped from points outside the State of Montana. During the same period, the Company manufactured finished products valued at approximately \$224,000, approximately 57 percent of which was shipped to points outside the State of Montana. 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 International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 1, 1942, the Company and the A. F. L. entered into a contract,² which by its terms expired on October 1, 1943; it contained no provision for extension or renewal. On August 30, 1943, the A. F. L., pursuant to a provision in the contract which stated that such contract could be reopened prior to its termination date if either party served 30-day notice thereof, notified the Company that it desired to reopen the contract. However, no bargaining conference was held by the parties until November 20, 1943. On November 12, 1943, the C. I. O., by letter, had requested that the Company recognize it as the exclusive bargaining representative of the Company's employees. The Company replied, by letter, on November 14, 1943, that it could not grant such recognition because of an existing contract between the Company and the A. F. L. covering the employees in question. In the meantime, the 1942 contract terminated on October 1, 1943, and no written agreement was entered into by the parties for the extension thereof.³ On November 27, 1943, the Company and the A. F. L. held another bargaining conference, and on November 30, 1943, the parties signed a new contract of indefinite duration which the Company and the A. F. L. contend constitutes a bar to a present determination of representatives. We have often held that a contract of indefinite duration does not constitute a bar. Furthermore, since the 1942 contract was terminated on October 1, 1943, and since the C. I. O. has asserted its claim to recognition prior to the consummation of the new agree-

² The Company and the A. F. L. have been in contractual relationship for several years.

³ The Company contended that it was understood by both parties that the old contract would remain in effect until a new one was negotiated.

ment on November 30, 1943, this latter agreement constitutes no bar to a present determination of representatives.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, and a statement of the Trial Examiner made at the hearing, indicate that the C. I. O. represents a substantial number of employees in the unit hereinafter found to be appropriate.⁴

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 C. I. O. seeks a unit comprised of all the Company's production and maintenance employees, including watchmen, but excluding clerical and supervisory employees. The Company and the A. F. L. agree generally with the scope of the unit sought by the C. I. O., but dispute the inclusion of watchmen in such unit.

The A. F. L. relies upon the contract referred to above as establishing its interest.

The Company employs two watchmen, who guard the plant against fire and unlawful entry, making periodic rounds to inspect the property and spend approximately an hour a day performing janitorial duties; they are not sworn in as members of the auxiliary military police. Since their duties appear to be those customarily performed by watchmen, rather than those of a specialized plant-protection force, we shall include them in the unit.⁵

We find that all production and maintenance employees of the Company, including watchmen, but excluding clerical employees 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 the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

⁴ The combined statements show that the C. I. O. submitted 40 authorization cards, 39 of which bear names of persons whose names are listed on the Company's pay-roll of January 15, 1944; the cards were dated in November and December 1943, and January 1944. There are approximately 39 employees in the appropriate unit.

⁵ See *Matter of Gardner-Denver Company*, 52 N. L. R. B., 1277, and cases cited therein.

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 A. N. Eaton Metal Products Company, Billings, Montana, 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 Nineteenth 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 any 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 C. I. O., or by International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the A. F. of L., for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.