

In the Matter of AMERICAN BRASS COMPANY *and* INTERSTATE COPPER
AND BRASS WORKERS UNION, AFFILIATED WITH CONFEDERATED UNIONS
OF AMERICA

Case No. 3-R-699.—Decided March 3, 1944

Mr. Milton Addison Nixon, for the Board.

Kenefick, Cooke, Mitchell, Bass & Letchworth, by *Messrs. Lyman N. Bass* and *LeGrand F. Kirk*, of Buffalo, N. Y., for the Company.

Mr. John F. Cusack, of Chicago, Ill., and *Mr. James Kosma*, of Rome, N. Y., for the Copper and Brass Workers.

Mr. Neil Eastman, of Buffalo, N. Y., for the Smelter Workers.

Mrs. Ellen Davidson, of Buffalo, N. Y., for the Office Workers.

Miss S. Catherine Wilson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Interstate Copper and Brass Workers Union, affiliated with Confederated Unions of America, herein called the Copper and Brass Workers, alleging that a question affecting commerce had arisen concerning the representation of employee, of American Brass Company, Buffalo, New York, herein called the Company, 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 December 8, 1943. At the hearing the Trial Examiner granted motions to intervene made by the International Union, Mine, Mill & Smelter Workers, affiliated with the Congress of Industrial Organizations, herein called the Smelter Workers, and by the United Office and Professional Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Office Workers. The Company, the Copper and Brass Workers, the Smelter Workers, and the Office Workers 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

American Brass Company, a Connecticut corporation, is engaged in the fabrication of copper and brass at Buffalo, New York. During the year 1942, the Company used at its Buffalo plant raw materials amounting in value to approximately \$13,000,000, of which approximately 90 percent represented shipments from points outside the State of New York. In the same year the Company manufactured at its Buffalo plant finished products amounting in value to approximately \$30,000,000, of which approximately 90 percent represented shipments to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

Interstate Copper and Brass Workers Union, affiliated with Confederated Unions of America, is a labor organization admitting to membership employees of the Company.

United Office and Professional Workers of America, and International Union, Mine, Mill & Smelter Workers, both affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Copper and Brass Workers as exclusive bargaining representative of employees in the alleged appropriate unit until it has been certified by the Board.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Copper and Brass Workers represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹ The Field Examiner reported that Copper and Brass Workers submitted 55 application for membership cards, which bore apparently genuine original signatures; that the names of 49 persons appearing on the cards were listed on the Company's pay roll of October 24, 1943, which contained the names of 105 employees in the appropriate unit; that the cards were dated as follows: November 1943, 1; October 1943, 7; September 1943, 40; August 1943, 1. He reported that the Office Workers submitted 4 application cards which bore apparently genuine original signatures, that the names of 2 persons appearing on the cards were listed on the Company's pay roll of October 24, 1943, which contained the names of 105 employees in the appropriate unit, that the applications were dated November 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 Act.

IV. THE APPROPRIATE UNIT

The Copper and Brass Workers requests a unit comprising all mill clerical employees (including methods, promise, cost, receiving and shipping clerks), testers, laboratory employees, and timekeepers, but excluding premium clerks, time-study clerks, general office and clerical employees, confidential secretaries, chief timekeeper, chief clerks in operating departments, heads of divisions in the labor relations department, and supervisory employees.² The Office Workers would enlarge the unit to include the Company's main office employees. The Company objects to the unit on the ground that the employees included therein are engaged in managerial or confidential functions. The Smelter Workers contests the inclusion in the unit of testers, claiming that these employees fall within the production and maintenance unit for which it is the certified bargaining representative.³

As indicated above, the Office Workers would include the main office employees in the unit sought. The mill clerks and the main office employees are carried on independent pay roll; they have different vacation schedules; and there is little interchange between the two groups of employees. The mill clerks are paid generally on an hourly basis, while the main office employees are paid generally on a salary basis. Moreover, the Office Workers has failed to produce any evidence of representation among the main office employees. Under these circumstances, we are of the opinion that the main office employees should not be added to the unit of mill clerical and laboratory employees hereinafter found appropriate.

We find no merit in the general contention of the Company that the mill clerical and laboratory employees perform functions of a managerial or confidential nature. There is no evidence that the duties of these employees are closely allied to management or that they involve knowledge of matters pertaining to labor relations. In addition, however, the Company made particular objection to the inclusion of cost clerks and departmental timekeepers. The cost clerks follow metal assigned to the various orders through the mill

² The laboratory employees, whom the Copper and Brass Workers would include, and the premium and time-study clerks, whom it would exclude, are housed in what is known as the mill office building. The remaining employees in the unit sought by the Copper and Brass Workers are located in the mill, which building houses the production and maintenance employees.

³ On August 18, 1943, pursuant to a Board directed election (51 N. L. R. B. 137), the Smelter Workers was certified as the bargaining representative of the Company's production and maintenance employees, exclusive of supervisory, office, clerical, technical, and laboratory employees, timekeepers, and plant guards.

operations and record details concerning methods, cost, lapsed time, number of men involved, and the cost of scrap metal. Upon the basis of their compilations, management sets its prices. We are of the opinion that these functions do not warrant the exclusion of the cost clerks from the unit. The departmental timekeepers, on the other hand, are entrusted with the responsibility of keeping the time books of the departmental foremen. They are responsible to the foremen, who delegate to the timekeepers the duty of checking each individual on the job shortly after the beginning of the shift and again after the lunch period. The check thus made is compared weekly with the time cards which employees are required to punch daily. In view of the duties thus delegated by the foremen to them, we shall exclude departmental timekeepers from the unit hereinafter found appropriate.

The testers, who the Smelter Workers contends are part of the production and maintenance unit which it represents, make certain laboratory tests upon samples of metal, and record the results. Because of lack of space in the main laboratory, they perform their duties in a boarded-off room in the mill. By reason of their physical location they are under supervision of the mill foremen, but in case of difficulty with their work they consult the main laboratory. The qualifications and work performed by testers and employees in the main laboratory are similar, neither group being required to possess technical education or experience. We find that the testers are, in effect, laboratory employees, and we shall, therefore, include them in the unit.⁴

We find that all mill clerical employees (including methods, promise, cost, receiving and shipping clerks), testers, and laboratory employees, but excluding departmental timekeepers, premium clerks, time-study clerks, general office and clerical employees, confidential secretaries, chief timekeeper, chief clerks in operating departments, heads of divisions in the labor relations department, 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.

⁴ As previously stated, laboratory employees were expressly excluded from the production and maintenance unit for which the Smelter Workers was certified. Although there is evidence that some of the testers voted under challenge in the prior election conducted among the Company's production and maintenance employees, there is no evidence that the issue of their inclusion or exclusion within the production and maintenance unit has been raised or determined during the contract negotiations now pending between the Company and the Smelter Workers. In view of our finding above, we shall not accord the Smelter Workers a place on the ballot.

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. The Copper and Brass Workers requests that its name appear on the ballot as International Copper and Brass Workers Union, C. U. A.; and the Office Workers, that its name appear as United Office and Professional Workers of America, C. I. O. The requests are hereby granted.

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 American Brass Company, Buffalo, 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 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 International Copper and Brass Workers Union, C. U. A., or by United Office and Professional Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.