

In the Matter of BETHLEHEM STEEL COMPANY and AMERICAN FEDERATION OF LABOR, FEDERAL LOCAL 23332

*Case No. 3-R-735.—Decided March 21, 1944*

*Mr. Gerald J. Reilly*, of Bethlehem, Pa., for the Company.  
*Mr. Neil J. Cunningham*, of Buffalo, N. Y., for the Union.  
*Mr. William Strong*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Labor, Federal Local 23332, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Lackawanna, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold X. Summers, Trial Examiner. Said hearing was held at New York City, on February 17, 1944. The Company and the Union appeared and participated.<sup>1</sup> 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. At the hearing the Company moved that the petition be dismissed on the ground that the persons whom the Union seeks to include in the unit are not within the meaning of the term "employees" as defined by the Act, and for the further reason that the unit sought by the Union is inappropriate.<sup>2</sup> The Trial Examiner reserved ruling for the Board. For reasons set forth more fully below, the motion is denied.

Upon the entire record in the case, the Board makes the following:

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<sup>1</sup> United Steelworkers of America, CIO, has indicated that it has no interest in this proceeding.

<sup>2</sup> Although at the outset of the hearing the Company stated that it was entering only a special appearance to contest the Board's jurisdiction for these same reasons, the Company thereafter participated fully in the hearing.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company, a Pennsylvania corporation, is engaged at a plant at Lackawanna, New York, in the manufacture of steel products. During 1943, the Company at its Lackawanna plant used raw materials valued in excess of \$66,000,000, more than 85 percent of which was delivered from points outside the State of New York, and manufactured finished products valued in excess of \$100,000,000, more than 80 percent of which was shipped to its plant from points outside the State of New York.

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

## II. THE ORGANIZATION INVOLVED

American Federation of Labor, Federal Local 23332 is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 Union seeks a unit composed of all employees in the Fire Department of the Company's Lackawanna plant, excluding the chief and the assistant chief. The Company asserts that none of the persons whom the Union seeks to include in the unit fall within the definition of the term "employee" as used in the Act, that the firemen are "identified with management and their interests are opposed to the interests of the majority of the workers" at the plant, that the exercise of collective bargaining rights by the firemen would place them in "a position in which there would be a conflict between their duties and responsibilities to the Company and their own interests," that the firemen exercise supervisory functions over the production and

<sup>3</sup> The Field Examiner reported that the Union submitted 35 authorization cards, all of which bore names of employees in the alleged appropriate unit, which contains 44 persons.

maintenance employees and their supervisors, and that the firemen occupy positions of a confidential nature. The Company further asserts that in the event the Board should find no merit in these contentions, that in addition to the chief and the assistant chief, the captains, lieutenants, and clerical employees in the Fire Department should be excluded from the unit. Nothing in the Act, its legislative history, or the record before us supports the Company's contention that the Fire Department personnel do not come within the definition of the term "employee" as used in the Act. Moreover, nothing in our experience leads us to believe that the exercise of collective bargaining rights under the Act is incompatible with the competent performance of their duties as employees.

The Fire Department is engaged in the prevention and fighting of fires on the Company's property, and in the maintenance of the necessary equipment. While the firemen may, in the enforcement of fire prevention regulations recommend the suspension of work and can report violations of regulations by employees to their superiors, the firemen are not in a supervisory capacity with respect to ordinary employees in the recognized sense of that term. Nor can it be said that the firemen are representatives of management in such a sense as to place them within the purview of our decision in *The Maryland Drydock* case,<sup>4</sup> upon which the Company relies. Likewise without substance is the Company's contention that firemen are confidential employees of such a type as to require their exclusion from all units.<sup>5</sup>

The staff of the Fire Department consists of 11 officers, including a chief, an assistant chief, 2 captains, 7 lieutenants, 43 patrolmen, and 2 clerical employees.<sup>6</sup> Orders originate with the chief and are transmitted in turn through the various officers to the patrolmen. The officers below the chief direct, supervise, and inspect the work of the patrolmen. In this hierarchy, the lieutenants are the immediate supervisors of the patrolmen. None of the officers have the power to discharge the patrolmen; all of them have the power to suspend patrolmen for infractions of rules subject to further action by higher authorities.<sup>7</sup> Original on-the-spot suspensions are followed by hearings at which the suspended patrolmen and the charging officers, including

<sup>4</sup> *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733.

<sup>5</sup> The Company made similar contentions with respect to its plant guards or police at this plant, which we likewise found to be without merit, in *Matter of Bethlehem Steel Corporation*, 47 N. L. R. B. 1330.

<sup>6</sup> The Fire Department is one of the plant-protection units, which include also police, medical, safety, and air raid units. The assistant superintendent of industrial relations at the plant is also the chief of plant-protection, and is the coordinator of all of the above units.

<sup>7</sup> Although the record is not entirely clear, it appears that only the chief and the assistant chief can effectively recommend other changes in the status of employees. Neither of these two officers can discharge any employees.

captains and lieutenants, present their respective versions of the infraction incidents in question. Patrolmen receive no pay for periods during which they are under suspension.

It is evident that the captains and lieutenants fall within our definition of supervisory employees. We shall exclude them from the unit.<sup>8</sup>

The clerical employees in the Fire Department are engaged entirely at clerical work and perform none of the duties assigned to patrolmen. We shall exclude them from the unit.

We find that all patrolmen in the Fire Department at the Lackawanna plant of the Company, excluding the clerical employees, the chief, the assistant chief, captains, and lieutenants, 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.<sup>9</sup>

#### 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 Bethlehem Steel Company, Lackawanna, 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,

<sup>8</sup> In a prior proceeding the parties stipulated that an appropriate unit of plant guards, who are a part of the Company's plant-protection forces, should not include captains, first and second lieutenants, and desk sergeants. *Matter of Bethlehem Steel Corporation*, 47 N. L. R. B. 1330.

<sup>9</sup> The Union wishes to be designated on the ballot as the "A. F. of L." The request is hereby granted.

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 the A. F. of L., for the purposes of collective bargaining.