

In the Matter of THE NEW JERSEY ZINC COMPANY (OF PA.) and
BROTHERHOOD OF RAILROAD TRAINMEN, IND.

In the Matter of THE NEW JERSEY ZINC COMPANY (OF PA.) and
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS, IND.

*Cases Nos. 4-R-1303 and 4-R-1304 respectively.—Decided
May 3, 1944*

*Covington, Burling, Rublee, Acheson & Shorb, of Washington,
D. C., by Messrs. Charles A. Horksy and George F. Hirmon, for the
Company.*

*Mr. W. L. Reed, of East Mauch Chunk, Pa., and Mr. R. M. Davis,
of Slatington, Pa., for the Trainmen.*

Mr. R. E. Tydings, of Washington, D. C., for the Engineers.

Mr. Armin Uhler, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Brotherhood of Railroad Trainmen, Ind., herein called the Trainmen, and Brotherhood of Locomotive Firemen and Engineers, Ind., herein called the Engineers, each alleging that a question affecting commerce had arisen concerning the representation of employees of The New Jersey Zinc Company (of Pa.), Palmerton, Pennsylvania, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on February 8, 1944. The Company, the Trainmen, and the Engineers 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.¹

¹ The Company has requested an oral argument which is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The New Jersey Zinc Company (of Pa.), is a Pennsylvania corporation which operates plants at Palmerton and Freemansburg, Pennsylvania. At the Palmerton plant, the only one here involved, the Company is engaged in the manufacture of slab zinc, spiegeleisen, rolled zinc, cadmium, zinc oxide, zinc dust, zinc sulphide pigments, and sulphuric acid. In the manufacture of these products, the Company uses such raw materials as zinc ores, lead ores, barytes, anthracite and bituminous coal, coke, and limestone. During the year 1943, more than 50 percent of the raw materials used by the Company at its Palmerton plants was shipped to it from points outside the Commonwealth of Pennsylvania. During the same year, the Company sold finished products valued at approximately 22½ million dollars, 80 percent of which was shipped to destinations outside the Commonwealth of Pennsylvania.

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

II. THE ORGANIZATIONS INVOLVED

Brotherhood of Railroad Trainmen, Ind., and Brotherhood of Locomotive Firemen and Engineers, Ind., are unaffiliated labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated at the hearing that on or about November 19, 1943, both the Trainmen and the Engineers requested recognition as the bargaining agents of the Company's employees in the units respectively claimed by them to be appropriate, and that the Company refused to grant such recognition unless and until both organizations had been certified by the Board.

A statement of a Field Examiner, introduced into evidence, shows that both the Trainmen and the Engineers represent substantial numbers of employees in the respective units hereinafter found appropriate.²

² The following table reflects the Field Examiner's statement of the authorization cards submitted by the Trainmen and the Engineers and compared with the Company's pay roll of December 17, 1943:

	Number cards submitted	Number employees in unit	Number checked on pay roll
Trainmen.....	24	31	22
Engineers.....	13	27	13

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 Trainmen and Engineers, respectively, request two separate units of employees engaged in standard gauge railroad operations, comprising (1) all conductors and brakemen engaged at the Company's East and West plants, and (2) all locomotive engineers, firemen, and hostlers at the Company's East and West plants. The Company takes the position that the appropriate unit should be plant-wide or, in the alternative, that the units requested by the unions should include the employees operating narrow gauge equipment and locomotive cranes.

The Company, in connection with the manufacturing business which it conducts at the East and West plants of the Palmerton establishment, carries on extensive railroad operations.³ The greater part of these operations are performed by the Plant Railroad Division which embraces all the employees here involved.⁴ Although the Plant Railroad is an adjunct of the Company's Service and Maintenance Department, it is a well-defined entity with distinct functions. Plant Railroad operations are carried out by means of some 35 miles of standard gauge and about 2 miles of narrow gauge track⁵ over which various types of locomotive equipment and rolling stock move.⁶ The standard gauge switching operations in which the employees sought to be represented by the Trainmen and the Engineers are engaged, consist on the one hand in exchanging incoming and outgoing traffic with connecting common carriers at their classification points, located both outside and inside the plant premises; and on the other hand in transporting raw and partially processed materials to and from the respective manufacturing departments of the East and West plants. Locomotive crane and narrow gauge operations of the Plant Railroad

³ The two plants, situated about 1 mile apart, are connected by the Chestnut Ridge Railway, a common carrier and a subsidiary of The New Jersey Zinc Company which is also the parent of The New Jersey Zinc Company (of Pa.). All traffic between the East and West plants moves over the Chestnut Ridge Railway whose operations are not involved in this proceeding.

⁴ The operators of the specialized railroad equipment used in connection with the Company's Slab Zinc Department and boilerhouse at the West plant, and the Waelz Kiln and Oxide Department at the East plant do not come within the Railroad Division and, by agreement of the parties, are to be excluded from the units herein.

⁵ The narrow gauge tracks are confined within the boundaries of the West plant.

⁶ The Plant Railroad utilizes four 70-ton and two 20-ton standard gauge steam locomotives; three 12-ton narrow gauge locomotives; nine 15-ton standard gauge steam locomotive cranes and one 25-ton standard gauge Diesel locomotive crane; and a total of approximately 310 cars of various descriptions, about 50 of which are narrow gauge cars.

The Company also owns one 14-ton locomotive, two 20-ton steam locomotives, one 12-ton gasoline locomotive, one 12-ton storage battery locomotive, and one electric transfer car, which are not operated by the Railroad Division but by employees of other departments (see note 4, *supra*).

serve substantially different purposes. Locomotive cranes are used exclusively for loading and unloading operations; they perform only minor switching operations where necessary to place the cars to be loaded or unloaded in the desired positions. Narrow gauge operations are limited to the removal of clinker from the West plant oxide and blast furnaces.

The standard gauge engineers, firemen, conductors, and brakemen in the units proposed by the Trainmen and the Engineers thus constitute a separate group whose functions are clearly distinguishable from those performed by the locomotive crane and narrow gauge operators. Moreover, standard gauge employees, because of the greater skill required,⁷ are paid at a higher rate than both locomotive crane and narrow gauge employees of the Railroad Division.

As to the hostlers whose inclusion in the Engineers' unit is requested, these employees are concerned with holding idle locomotives ready for use by keeping up the fires, maintaining the water in the boilers, sanding, etc. The inclusion of this class of railroad employees in units of engineers and firemen is customary.⁸ It is true that the Company's hostlers tend not only standard gauge locomotives but also all other locomotive equipment, but we do not regard this as a sufficient reason for their exclusion.

In determining the appropriateness of the units requested herein we also take into consideration the fact that no other labor organization is seeking at the present time to represent the employees concerned in the more comprehensive alternative units preferred by the Company.⁹ Under all the circumstances we find that (1) all conductors and brakemen engaged in standard gauge railroad operations at the Company's East and West plants, and (2) all locomotive engineers and firemen engaged in standard gauge railroad operations and all hostlers at the Company's East and West plants, excluding 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 appropriate units 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 elections by secret ballot among the employees

⁷ Standard gauge operations require a crew consisting of an engineer, a fireman, a conductor, and two brakemen, while narrow gauge and crane operations are carried out by an engineer and coupler, and a crane operator and fireman, respectively.

⁸ See *Matter of Green River Ordnance Plant, Stewart-Warner Corporation*, 51 N. L. R. B. 1277; *Matter of Phelps Dodge Corporation (New Cornelia Branch)*, 40 N. L. R. B. 180.

⁹ Cf. *Matter of E. I. Du Pont de Nemours & Company*, 54 N. L. R. B. 1543, *Green River Ordnance Plant, Stewart-Warner Corporation*, *supra*

in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 The New Jersey Zinc Company (of Pa.), Palmerton, Pennsylvania, elections 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 Fourth 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 units 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 elections, to determine whether or not the employees in said units desire to be represented respectively by Brotherhood of Railroad Trainmen, Ind., and Brotherhood of Locomotive Firemen and Engineers, Ind., for the purposes of collective bargaining.