

In the Matter of ELECTRO METALLURGICAL COMPANY and UNITED BROTHERHOOD OF WELDERS, CUTTERS AND HELPERS OF AMERICA, LOCAL 42

In the Matter of ELECTRO METALLURGICAL COMPANY and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, CIO

Cases Nos. 19-R-1299 and 19-R-1318 respectively.—Decided June 16, 1944

Mr. Edwin H. Mangan, of Spokane, Wash., and Mr. Gunther F. Krause, of Portland, Oreg., for the Company.

Mr. Henry A. Doty, of Seattle, Wash., for the Weldors.

Mr. George Knott, of Kellogg, Idaho, for the CIO.

Mr. P. H. LaRiviere, of Spokane, Wash., for the Council.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by United Brotherhood of Weldors, Cutters and Helpers of America, Local 42, herein called the Weldors, and by International Union of Mine, Mill and Smelter Workers, CIO, herein called the CIO, alleging that questions affecting commerce have arisen concerning the representation of employees of Electro Metallurgical Company, Spokane, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Spokane, Washington, on April 28, 1944. The Company, the Weldors, the CIO, and Spokane Metal Trades Council, herein called the Council, 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.

56 N. L. R. B., N. 262.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Electro Metallurgical Company, a West Virginia corporation, maintains its principal office in New York City. It operates eight plants in various cities of the United States, one of which, located in Spokane, Washington, is involved in this proceeding. At the Spokane plant, the Company, as agent for the Defense Plant Corporation, manufactures magnesium. In its operations, the Company purchases in excess of \$500,000 worth of raw materials per year, approximately 10 percent of which is shipped to the Spokane plant from points outside the State of Washington. The Company produces magnesium of a value in excess of \$500,000 per year, approximately 80 percent of which is shipped to points outside the State of Washington. One hundred percent of the products of the Company is used for defense purposes.

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

II. THE ORGANIZATIONS INVOLVED

United Brotherhood of Weldors, Cutters and Helpers of America, Local 42, is a labor organization admitting to membership employees of the Company.

International Union of Mine, Mill and Smelter Workers, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Spokane Metal Trades Council, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to any labor organization as the exclusive bargaining representative of its employees until it has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that each of the labor organizations participating herein represents a substantial number of employees in the unit which it alleges to be appropriate.¹

¹ The Field Examiner reported that the Weldors submitted a petition bearing 47 signatures; that the names of 26 persons appearing on the petition were listed on the Company's

We find that questions affecting commerce have 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 DETERMINATION OF REPRESENTATIVES

The Welders requests a unit of welders, burners, lay-out men and welder's helpers. The Council requests a unit of all millwrights, electrical workers, sheet-metal workers, pipefitters, and machinists and their respective helpers. The Company and the CIO contend that only a plant-wide unit exclusive of supervisory and clerical employees and guards is appropriate for bargaining at the Company's plant. The Company would exclude laboratory workers from the plant-wide unit; the CIO would include these employees.

The welders in the plant are a part of the Maintenance Department. Although they are under the jurisdiction of the supervisory hierarchy of that department, they are directly supervised by a man who is presently termed a straw boss, whom the Company is training to be a welders' foreman. This man tours the plant and retains jurisdiction over the welders no matter where they are working. The welders report for work at three central locations, two of which are welders' shops at the ends of buildings; the third is the general machine shop where all maintenance employees report. Whenever possible, they do their work in the parts of the plant where their equipment is set up or in the machine shop. However, when a piece of equipment is too large to be brought to the machine shop or the welders' shops, the welders take portable machinery into the plant to perform their work. They do nothing but welding, burning, and cutting. No other employees in the plant weld or burn except a utility man who occasionally cuts through a piece of pipe. They have safety problems common only to themselves. We find that the welders employed by the Company at its Spokane, Washington, plant are a homogeneous, identifiable group working under separate supervision, engaged solely in specialized operations which, because of their skill and training, they alone are competent to perform.² Accordingly, we are of the opinion that the

pay roll of April 10, 1944, which contained the names of 32 employees in the unit requested by the Welders.

The CIO submitted 339 cards. The names of 232 persons appearing on the cards were contained in the aforesaid pay roll which contained the names of 642 employees in the unit requested by the CIO.

The Council submitted to the Trial Examiner 61 application for membership cards of the Spokane Aluminum Trades Council, 51 of which bore signatures of persons listed on the Company's maintenance pay roll of April 10, 1944. Said maintenance pay roll contained 117 names. The Company objected to the intervention of the Council on the ground that it showed no interest whatsoever. The persons who signed the Aluminum Trades Council's cards through their representatives directed that the Metal Trades Council should intervene in their behalf in this proceeding. There is, therefore, no merit in the Company's objection.

² Cf. *Port Houston Iron Works*, 46 N. L. R. B. 155; *Matter of Aluminum Company of America*, 54 N. L. R. B. 421.

unit requested by the Weldors may be an appropriate one for bargaining if the employees so desire.

The Maintenance Department of the Company consists not only of the millwrights,³ electrical workers, sheet-metal workers, pipefitters and machinists and their helpers whom the Council would represent, but also of blacksmiths, carpenters, painters, boilermakers, operating engineers, oilers and wipers, track repairmen, truck drivers, truck mechanics, diesel mechanics and their helpers as well as the welders who we have heretofore found may constitute a separate unit. They never take orders from a production foreman; the production foreman must make his request of the maintenance foreman who, in turn, instructs the maintenance employees. Maintenance and production employees may work side by side, but never on the same job. It appears therefore, that employees of the Maintenance Department are sufficiently distinguishable from those of the Production Department to warrant their being represented in a unit separate and apart from production employees if they so desire. We perceive, however, no basis for excluding from such a unit maintenance employees other than welders, whom we have heretofore found to constitute a separate identifiable group. The unit requested by the Council is neither craft nor departmental. It comprises a number of crafts while excluding related crafts; it is confined to a department of the Company but excludes employees who are a part of that department. We find that the unit requested by the Council is not appropriate for bargaining. However, since that unit comprises the major portion of the Maintenance Department which we have found may constitute an appropriate unit, we shall herein treat the request of the Council as if it had been made for the more inclusive unit.⁴

The operations of the entire plant are sufficiently integrated to make feasible, and appropriate for bargaining, the plant-wide unit requested by the CIO.⁵ Since the factors supporting the appropriateness of such a unit and of separate units for welders and other maintenance employees, respectively, are evenly balanced, we are of the opinion that our determination of the unit issue with respect to the employees in question should depend, in part, upon the desire of such employees, to be expressed in the elections hereinafter directed among

³ The Company denies that it employs millwrights. It terms these employees "repairmen."

⁴ See *Matter of Western Automatic Machine Screw Co*, 51 N. L. R. B. 1042

⁵ The feasibility of the plant-wide unit is demonstrated by the fact that the employees at the Company's Duluth, Minnesota, Ashtabula, Ohio, and West Virginia plants are represented in plant-wide units. In the Minnesota and West Virginia plants, this form of unit was set up by agreement of the parties. In the Ashtabula plant, a craft group requested recognition but the unit requested by it was inappropriate because it was not a segregable, identifiable group. See *Matter of Electro Metallurgical Company (Duluth, Minnesota)*, 45 N. L. R. B. 335; *Matter of Electro Metallurgical Company (2 plants in West Virginia)*, 51 N. L. R. B. 38; *Matter of Electro Metallurgical Company (Ashtabula, Ohio)*, 54 N. L. R. B. 15.

the voting groups set forth below. Consequently, we shall make no final determination of the unit at this time, but shall defer the determination pending the results of said elections.

The Company contends that helpers and lay-out men should not vote with the welders and that laboratory workers should be excluded from the unit requested by the CIO. Originally each helper employed by the Company was permanently attached to a specific craft group. The Company has now changed the designation of helpers and employs a pool of helpers called repairmen's helpers. These helpers are still regularly assigned to assist the same craftsmen with whom they worked prior to the change. The Company, however, intends to use them wherever they are needed. The lay-out men prepare materials for the welders to work upon, and inform the welders what is to be done. The Company intends to use lay-out men in a similar capacity in all repair work as soon as the present unusual need for welding has slackened. It appears, therefore, that neither the helpers nor the lay-out men are more peculiarly identified with the welders group, than with the residue of the Maintenance Department,⁶ and we shall direct that they vote with the other employees in the Maintenance Department. The laboratory workers are trained technicians who have no contact with maintenance and production employees. Since in our opinion the interests of technical employees are so divergent from those of production and maintenance employees as in most instances to require separate units for bargaining for the respective employees, we shall exclude the laboratory employees from the voting group of production employees.⁷

We shall direct that the questions concerning representation which have arisen shall be resolved by separate elections by secret ballot to be held among the employees of the Company at its Spokane, Washington, plant, within each of the voting groups listed below 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. Our determination of an appropriate unit, or units, if any, will depend in part upon the results of said elections. There shall be excluded from each of said voting groups in addition to the employees specifically mentioned therein, all clerical and technical employees, guards, 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. The respective voting groups shall be:

1. All welders and burners, excluding helpers and lay-out men.

⁶ See *Matter of Pure Oil Company*, 55 N. L. R. B. 1455.

⁷ See *Matter of Boston Edison Company*, 51 N. L. R. B. 118.

2. All employees in the Maintenance Department of the Company, exclusive of welders and burners.

3. All other employees of the Company, excluding laboratory employees and the employees in voting groups 1 and 2.

Should the Council not desire to participate in the elections as herein directed, and notify the Regional Director within ten (10) days after the date of the issuance of this Decision and Direction of Elections of its desire not to participate, we shall allow the Council to withdraw from the proceedings. In such case, voting groups 2 and 3 herein shall be consolidated and vote as one.

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 Electro Metallurgical Company, Spokane, Washington, 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 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 following groups of employees 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, and excluding also all clerical and technical employees, guards, 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:

(1) All welders and burners employed by the Company at its Spokane, Washington, plant, excluding helpers and lay-out men, to determine whether they desire to be represented by United Brotherhood of Weldors, Cutters and Helpers of America, Local 42, or by International Union of Mine, Mill and Smelter Workers, CIO, for the purposes of collective bargaining, or by neither;

(2) All employees of the Maintenance Department of the Spokane plant, exclusive of welders and burners, to determine whether they desire to be represented by Spokane Metal Trades Council, A. F. of L., or by International Union of Mine, Mill and Smelter Workers, CIO, for the purposes of collective bargaining, or by neither;

(3) All other employees at the Spokane plant, excluding laboratory employees and the employees in voting groups (1) and (2) to determine whether or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, CIO, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Elections.