

In the Matter of ELECTRO METALLURGICAL COMPANY (NIAGARA WORKS)
and DISTRICT 50, UNITED MINE WORKERS OF AMERICA

In the Matter of ELECTRO METALLURGICAL COMPANY and BROTHER-
HOOD OF RAILROAD TRAINMEN

In the Matter of ELECTRO METALLURGICAL COMPANY and BROTHER-
HOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN

Cases Nos. 3-R-773, 3-R-818 and 3-R-820 respectively.—Decided
July 21, 1944

Messrs. Clarence L. Sager, and William C. Treanor, both of New York City, for the Company.

Mr. Stanley Denlinger, of Akron, Ohio, and Mr. Rinaldo Cappellini, of Niagara Falls, N. Y., for District 50.

Mr. Gavin Mitchell, of Niagara Falls, N. Y., and Mr. Charles A. Doyle, of Niagara Falls, N. Y., for the C. I. O.

Messrs. Harold C. Heiss and Russell B. Day, both of Cleveland, Ohio, for the B. R. T. and the Firemen.

Mr. David V. Easton, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Electro Metallurgical Company (Niagara Works), Niagara Falls, 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 Niagara Falls, New York, on May 22, 1944. The Company, District 50, and Local 250, United Gas, Coke and Chemical Workers, C. I. O., herein called the C. I. O., appeared, participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and

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to introduce evidence bearing on the issues. During the hearing, the parties executed an "Agreement for a Consent Election,"¹ and the hearing was adjourned indefinitely. Thereafter, a first amended petition was duly filed by Brotherhood of Railroad Trainmen, herein called the B. R. T. and a petition was duly filed by Brotherhood of Locomotive Firemen and Enginemen, herein called the Firemen, each alleging that a question affecting commerce had arisen concerning the representation of employees of the Company. The Board consolidated all the cases and provided for a further hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Niagara Falls, New York, on June 15, 1944. The Company, District 50, the C. I. O., the B. R. T.,² and the Firemen³ appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At this hearing both District 50 and the Company moved upon various grounds to dismiss the petitions filed by the B. R. T. and the Firemen; the Trial Examiner referred these motions to the Board. For the particular reasons hereinafter set forth, the motions are hereby granted. The rulings of the Trial Examiner made at both hearings 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

Electro Metallurgical Company (Niagara Works), a West Virginia corporation authorized to conduct business in the State of New York, is engaged in the manufacture of calcium carbide and ferro-alloys. During the period between January 1, 1943, and December 31, 1943, the Company used raw materials at its Niagara Works valued in excess of \$500,000, of which more than 90 percent represents shipments to the Company from points outside the State of New York. During the same period, the Company manufactured finished products at its Niagara Works valued in excess of \$500,000, of which more than 75 percent represents shipments made 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.

¹ This agreement was approved by the Regional Director on May 23, 1944.

² The record discloses that Lodge 639 is the local organization more particularly involved herein.

³ The record discloses that Lodge 362 is the local organization more particularly involved herein.

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

Local 250, United Gas, Coke and Chemical Workers, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local 639, Brotherhood of Railroad Trainmen, and Lodge 362, Brotherhood of Locomotive Firemen and Enginemen, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize any labor organization as the collective bargaining representative of its employees, in the absence of certification by the Board.

Statements of a Board Field Examiner, introduced into evidence at the hearing, indicate that District 50 represents a substantial number of employees in the unit hereinafter found 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 Company, District 50, and the C. I. O. agree that all hourly paid production and maintenance employees of the Company, including watchmen, hourly paid research laboratory and development laboratory workers, but excluding all office and clerical and medical service employees, militarized plant-production employees, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute an appropriate unit.⁵ The B. R. T. seeks a unit composed of conductors, switchmen, and brakemen, and the Firemen seeks a unit consisting of railroad engineers, firemen, and hostlers; the employees sought by these two organizations are

⁴ The statements of the Field Examiner may be summarized by the following chart:

Type of unit	No. employees in unit	Representation showing in units			
		District 50	C I O.	B. R. T.	Firemen
Prod. and maint. unit.....	2,366	1,894	1,215		
B. R. T. unit.....	21			12	
Firemen's unit.....	17				14

¹ Spot checks were made of these designations against the Company's pay roll of March 4, 1944.

² Names appearing upon these designations also appeared upon the Company's pay roll of March 4, 1944.

⁵ This is the unit which was agreed upon in the "Agreement for Consent Election."

employed on the railway owned and operated by the Company's Niagara Works.⁶

The Raw Materials and Traffic Department of the Company, of which the railway employees form a part,⁷ is under the immediate supervision of the general yard master. The department is responsible for the receiving and unloading of all raw materials, the delivery to various points in the plant for processing, the loading of the finished products, and their delivery to the railroads servicing the Niagara Works.⁸ These movements of material within the plant are made upon the intraplant railway previously referred to, which is comprised of approximately 15 miles of track. Besides the railway employees, the department includes employees classified as material handlers, laborers, raw material crusher attendants, belt men, oilers, shredding machine operators, Larry car operators, various types of crane operators, and repair crews, all of whom are directly concerned with the transportation of materials within the plant. Each of these classifications bears a close functional relationship to the others in the department as well as to employees working in the various production departments.

The railway employees are primarily concerned with operating the tracks and rolling stock of the intraplant railway. On occasions caused by the fact that the Company does not possess sufficient siding space, some of these employees may have to leave the confines of the plant and place cars on the connecting lines between the railroads servicing the plant and the plant itself. There is some evidence which indicates that, under certain circumstances, these employees may perform some switching operations on the main line of one of the servicing railroads. However, the major portion of the duties of the railway employees is performed within the plant itself. The railway employees are not necessarily persons who have had prior experience with railroads, and a majority of them have been trained by the Company in order to perform their present duties. The Company's policy has been to make interdepartmental transfers during slack periods without regard to classification. Since, as previously indicated, the majority of the railway employees were originally hired for positions other than those which they now occupy, they are equally affected by this policy of the Company.

Although there has been no collective bargaining history covering the employees at the Niagara Works, the Company is presently bargaining collectively with respect to employees in eight of its plants:

⁶ These employees are hereinafter referred to collectively as the railway employees.

⁷ The department has about 116 employees. The railway employees comprise approximately 32 percent of this number.

⁸ There are two railroads which service the Company. Each owns connecting lines linking the plant with its main lines.

In each of these plants the employees are represented on the basis of an industrial unit. In discussing a similar situation involving another plant of the Company,⁹ we stated:

Where, as here, there is no history of collective bargaining, the form which collective bargaining has taken in other plants of an employer is regarded by the Board as a significant factor in determining the appropriate unit. Moreover, the history of collective bargaining throughout the steel industry generally, affords ample precedent for the finding that an industrial unit is appropriate. We note further that the engine service men are an integral part of a department which is more intimately related to the production of ferro alloys than to railroad transportation. Under the circumstances we shall retain the traditional bargaining unit in this industry and shall include the engine service men in the comprehensive unit.¹⁰

For the same reasons we are of the opinion that separate units of railway employees of the Niagara Works are not appropriate for the purposes of collective bargaining. Accordingly, we shall dismiss the petitions filed by the B. R. T. and the Firemen.

We find that all hourly paid production and maintenance employees of the Company, including watchmen, hourly paid research laboratory workers and development laboratory workers, but excluding all office and clerical and medical service employees, militarized plant-protection employees, and 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

Since the units sought by the B. R. T. and the Firemen have not been found to be appropriate, and these organizations claim no interest in the appropriate unit, we shall not place their names upon the ballot; on the other hand, inasmuch as we are conducting an election, and

⁹ *Matter of Electro Metallurgical Company*, 54 N. L. R. B. 15, and cases cited therein. In that proceeding, involving the Ashtabula plant, the Firemen sought to establish, as in this case, a unit of engine service employees.

¹⁰ See also *Matter of Geneva Steel Company*, 57 N. L. R. B. 50, and cases cited therein.

the C. I. O. has submitted some evidence of representation in the appropriate unit, we shall accord it a place thereon.

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 Electro Metallurgical Company (Niagara Works), Niagara Falls, 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 District 50, United Mine Workers of America, or by Local 250, United Gas, Coke and Chemical Workers, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

ORDER

On the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petitions for investigation and certification of representatives of employees of Electro Metallurgical Company (Niagara Works), Niagara Falls, New York, filed by Brotherhood of Railroad Trainmen, and by Brotherhood of Locomotive Firemen & Enginemen in Cases Nos. 3-R-818 and 3-R-820, respectively, be, and they hereby are, dismissed.

[See *infra*, 57 N. L. R. B. 1764 for Supplemental and Amended Decision and Direction of Elections.]