

In the Matter of AMERICAN SMELTING AND REFINING COMPANY, EMPLOYER *and* CHARLES S. LOWE, PETITIONER *and* UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, LOCAL 255, C. I. O., UNION

Case No. 20-RD-9.—Decided October 29, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held at San Francisco, California, on June 16 and 24, 1948, before Louis S. Penfield, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in the case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative, as defined in Section 9 (a) of the amended Act, of the employees designated in the petition.

The Union, a labor organization affiliated with the Congress of Industrial Organizations, is recognized by the Employer as the exclusive bargaining representative of employees designated in the petition.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit; the determination of representatives:

The Petitioner requests that a decertification election be held among laboratory employees, classified as chemists and assayers, at the Employer's Selby, California, plant. He contends that these employees are professional employees and constitute an appropriate unit separate

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80 N. L. R. B., No. 18.

from a more inclusive unit established by a prior Board decision. The Union denies that the laboratory employees are professional employees and contends that they do not constitute an appropriate unit. The Employer takes no position with respect to the issues thereby raised.

At its Selby plant, the Employer is engaged in the business of smelting lead and refining lead, gold, and silver ores and concentrates.

Office and laboratory employees at the Selby plant were established by the Board, in 1943, as a single unit appropriate for the purposes of collective bargaining.¹ Thereafter, following a Board-conducted election which was won by the Union's predecessor,² the office and laboratory employees have been covered as a unit by a series of collective bargaining agreements.³ The unit has remained unchanged in character to the present time.

The laboratory employees work in a building separated from those in which the office employees work.⁴ The laboratory is divided into three sections: a wet section in which analyses are performed by chemical processes; an assaying section in which analyses are performed by heat processes; and a bullion section in which a different heat process and a chemical process are used to assay and analyse bullions and high grade materials.

A chief chemist supervises and directs the work in the laboratory. The respective sections are headed by an assistant chief chemist, a chief ore assayer, and a chief bullion assayer. The laboratory employees are divided into two groups and are classified either as chemists or as assayers.⁵ These employees analyse and assay the content of ores and concentrates in order to determine their composition, especially the amount of gold, lead, silver, and copper contained therein. In the wet section of the laboratory, the chemists also test the slag from the plant furnaces to determine the byproducts of the ores.

¹ *Matter of American Smelting and Refining Co.*, 47 N. L. R. B. 871.

² International Federation of Architects, Engineers, Chemists and Technicians, CIO.

³ The most recent bargaining contract covering office and laboratory employees was a 1-year contract executed on November 24, 1945. The expiration date of the contract was thereafter extended to May 10, 1947; and by a further agreement executed on August 21, 1947, the contract was extended for an indefinite period. The decertification petition herein was filed on April 6, 1948. No claim has been made that a contractual bar exists to the instant proceeding; and, we find that, in fact, no such bar exists.

⁴ Office employees covered by the existing unit work in the plant general office, in the warehouse office, and in department offices. Office classifications thus covered include: bookkeeper, clerk, timekeeper, stenographer, typist, telephone operator, and messenger.

⁵ There are 4 grades in each of the chemist and assayer groups: chemist, associate chemist, junior chemist, and chemist assistant; assayer, associate assayer, junior assayer, and assayer assistant. At the time of the hearing, there were 2 chemists, 1 assayer, 2 associate assayers, 3 junior chemists, 1 junior assayer, and 1 chemist assistant in the laboratory. The total number, 10, is normal, but generally there are a greater number of employees with assayer and chemist ranks.

Most of the techniques and procedures used in the wet section of the laboratory are prescribed in a Manual prepared by the Employer's research laboratory, which is not a part of the Selby installation. The Manual is most explicit, and outlines a step-by-step description of each operation in the testing of the ores. While the majority of the tests performed in the laboratory are commonplace, and Manual methods are accordingly utilized, in some instances interfering elements appear in the samples being tested, and modifications of standard testing procedures are therefore necessary in order to obtain accurate analyses. In such cases, the personnel in the wet laboratory, especially the chemists and associate chemists, must be qualified to detect the presence of the interfering elements and to perform the necessary tests to ascertain their nature. Such problems often require the use of independent judgment and the exercise of a degree of discretion.

In the ore assay section of the laboratory, the assayers determine the gold, silver, and platinum content of ores. The nature of the work in that section and in the bullion section is essentially the same as in the wet section; that is, most of the work is routine, but problems also occur which require a departure from standardized methods of testing.

The work of the laboratory personnel is such that norms of daily output can be estimated for each man; such norms, however, vary with the experience of the individual and the type of testing he performs. The Employer prefers to recruit college graduates, who majored in chemistry or in metallurgical engineering, for its laboratory positions. However, people without college training, but with aptitude for the laboratory work, are also engaged.⁶

As indicated above, the Petitioner contends that the chemists and assayers are professional employees, and on that basis, seeks their decertification from the unit currently represented by the Intervenor. In the view we take of this proceeding, however, it is unnecessary for us to determine whether or not the laboratory employees meet the strict requirements of the definition of professional employees contained in Section 2 (12) of the Act. For it is evident from the type of work performed by the chemists and assayers, and from the position they occupy in the operations of the Employer's plant, that their work is of a technical nature, and that they are at least technical employees, whose status for the purposes of collective bargaining may be determined on those grounds alone. Accordingly, we find that the laboratory employees involved in this proceeding are technical employees.

⁶ Of the 10 laboratory workers in the unit described by the Petitioner, 5 employees had degrees from colleges and universities, with majors in chemistry, physics, and metallurgy; 1 employee had 2 years of college training, with courses in chemistry and physics; 2 employees had no college or university training; and the educational background of the 2 other employees was not set forth at the hearing.

The Board in the past has taken a consistent position with reference to the unit placement of technical employees. It has included them within a unit containing office and clerical employees where, as in the earlier Board decision which established the unit of office and laboratory employees now represented by the Intervenor,⁷ no objection was raised to the establishment of a single combined unit.⁸ Where, however, objection was in fact made to such treatment, the Board recognized differences in the interests, background, and functions of technical employees and those of clerical employees, and, accordingly, established such groups in separate units.⁹ We, moreover, believe that such general principles are sound, and that we should adhere to them.

Had the issue, therefore, concerning the separation of the laboratory employees from the existing unit been raised by means of a representation petition filed by a labor organization seeking to represent them in a separate unit, we would, in the light of such precedents, have granted the chemists and assayers a self-determination election to ascertain their wishes.¹⁰ Accordingly, and in view of the expressed policy of the Act which assures to employees the fullest freedom in exercising rights guaranteed to them thereby, we regard as unimportant the fact that such issue was actually raised by means of a decertification petition.¹¹

Upon all the facts, we find that laboratory employees at the Employer's Selby, California, plant, excluding the chief chemist, the assistant chief chemist, the chief ore assayer, the chief billion assayer, and other supervisors, may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. We shall direct an election by secret ballot be held among employees in this group. If the employees in the voting group do not select the Union, the Union will be decertified as to them; if, on the

⁷ *Matter of American Smelting and Refining Co.*, 47 N. L. R. B. 871.

⁸ See, for example, *Matter of Bethlehem Steel Company*, 65 N. L. R. B. 226; *Matter of Consolidated Vultee Aircraft Corporation (San Diego Division)*, 54 N. L. R. B. 103.

⁹ See *Matter of American Cyanamid Company*, 73 N. L. R. B. 144; *Matter of The Adams & Westlake Company*, 72 N. L. R. B. 726, and cases cited therein; *Matter of The Colson Corporation*, 70 N. L. R. B. 1235. Except in unusual circumstances, the Board has also separated technical employees from units of production and maintenance employees. See *Matter of Continental Motors Corporation*, 73 N. L. R. B. 888, and cases cited therein; *Matter of Florida Power and Light Company*, 63 N. L. R. B. 484.

¹⁰ See *Matter of Curtiss-Wright Corporation*, 63 N. L. R. B. 207, in which the Board, although recognizing the inherent differences in the bargaining interests of clerical and technical employees, took cognizance of special factors which aligned their interests, and afforded them the opportunity of expressing their unit preferences in self-determination elections.

¹¹ Our decision herein is not to be construed to mean that, upon the filing of a petition seeking the decertification of a labor organization, the Board will permit employees who do not constitute appropriate bargaining groups to be severed from existing units. In such matters, as in the instant case, we will adhere to our usual standards and policies for determining appropriate bargaining units, and will require their rigid satisfaction.

other hand, they select the Union, they will be taken to have indicated their desire to be included in a unit with clerical employees.¹²

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with American Smelting and Refining Company, Selby, California, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the voting group described in paragraph numbered 4, 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, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by United Office and Professional Workers of America, Local 225, C. I. O.

¹² The Union has not complied with the registration and filing requirements of the Act. Accordingly, if the Union wins the election, and it has not complied with such requirements, the Board will certify only the arithmetical results of the election. See *Matter of Harris Foundry & Machine Company*, 76 N. L. R. B. 118, *Matter of Magnesium Casting Company*, 76 N. L. R. B. 251.