

In the Matter of AMERICAN SMELTING AND REFINING COMPANY, EMPLOYER *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 480, A. F. OF L., PETITIONER

Case No. 4-RC-439.—Decided October 31, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Julius Topol, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer's motion to dismiss is denied for reasons stated hereinafter. The Employer's request for oral argument is also denied as the record and briefs, in our opinion, adequately present the issues and the positions of the parties.

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-member panel [Members Reynolds, Murdock, and Gray].

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

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

2. The labor organizations involved claim to represent certain employees of the Employer.

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 Petitioner seeks a unit of all employees of the Employer at its Perth Amboy, New Jersey, plant, employed in the powerhouse, the boilerhouse, and at the waste heat boilers, excluding clerical employees, guards, and supervisors. The Employer and Perth Amboy Smelter and Refinery Workers Union No. 365, of the International Union of Mine, Mill, and Smelter Workers, Intervenor herein, oppose the petition and contend that the employees in the proposed unit should not be severed from the current contractual bargaining unit principally upon the grounds: (1) that the employees in the proposed unit are

neither true craftsmen nor a homogeneous identifiable group functionally distinct from production and maintenance employees; (2) that the operations at the Employer's plant are highly integrated and interdependent; and (3) that there is a long history of collective bargaining on a more comprehensive basis.

The Employer is engaged at its Perth Amboy, New Jersey, plant, in the refining and production of copper, lead, silver, gold, antimony, tin, platinum, palladium, and such metallic derivatives as nickel sulphate, zinc oxide, antimony oxide, and tin tetrachloride. The primary functions of the employees in the proposed unit are to produce steam to generate electricity and to compress air for use in the production processes.

There are about 1,500 employees in the existing plant-wide unit. Of these, about 39 employees would be eligible for inclusion in the proposed power department unit.¹ The work area of these men is primarily within the powerhouse, the boilerhouse, and at the waste heat boilers.² The power engineer is in charge of the power department. However, there are under him 2 supervisors of whom one supervises the powerhouse employees and the other the boilerhouse and the waste heat boiler employees. While in some instances employees other than those within the proposed unit are under the same supervision as those within the unit, the supervision of power department employees remains substantially separate and distinct. Moreover, notwithstanding some contact with other personnel,³ power department employees constitute a distinct functional group.

The Employer and the Intervenor maintain that the employees in the proposed unit are not craftsmen. However, the absence of craft skill does not necessarily preclude the Board from recognizing that such a group of employees may constitute an appropriate bargaining unit. We have, on many occasions, severed from larger units departmental groups which are homogeneous and particularly distinct, although they are not pure craft groups, if they have a tradition of separate representation. Generally, we have found that powerhouse, boilerhouse, and waste heat boiler employees constitute such a departmental unit and we have permitted them self-determination elections

¹ Of the 39 employees in the power department 16 are licensed firemen and engineers as required by the law of New Jersey.

² There are five waste heat boilers attached to the copper casting furnaces which are about 500 feet from the main boilerhouse. These boilers are used for salvaging waste heat from the copper casting furnaces and account for about 35 percent of the steam and power produced by the power department.

³ This contact results from the fact that maintenance employees from the plant are called upon to supplement the maintenance force permanently stationed in the power and boiler houses, and other employees, not in the proposed unit, work alongside the unit personnel at the dock pump house and at the waste heat boilers.

to express their desires with respect to separate representation.⁴ We believe that the power department employees involved herein do not differ substantially from other power department employees whom the Board has repeatedly found to constitute a readily identifiable and functionally coherent group appropriate for the purposes of collective bargaining.⁵

The Employer and the Intervenor urge further that the proposed unit is inappropriate because the operations at the plant are highly integrated and interdependent. In support of this argument, they point to the fact that about 70 percent of the electricity generated is used in the electrolytic process for refining copper. The Employer and the Intervenor further argue that compressed air supplied by the powerhouse becomes a component part of one of the Employer's end products, namely, zinc oxide. These contentions are without merit. While the powerhouse employees operate the compressor that compresses and blows air into the converter which in turn extracts from the air the oxygen used in the production of zinc oxide, we do not regard the compressed air as furnished by the powerhouse employees as either the end product or a component part of the end product within the meaning of this term as used by the Board in cases involving public utilities.⁶ Although the functions of the employees in the proposed unit are essential to the operations of the plant and their activities must be coordinated with the activities of the production employees, these factors alone, including the furnishing of electricity by powerhouse employees for use in the electrolytic process, do not constitute the kind of integration which we deem necessary before we will deny severance to a group which might otherwise constitute an appropriate unit.⁷ Despite some evidence of integration of the power department employees' operations with the Employer's production process, we do not consider such employees an inseparable part of the over-all production unit.⁸

We believe that despite the history of collective bargaining at the Employer's plant on a different basis, the employees in the proposed unit may, if they so desire, constitute a separate bargaining unit.

⁴ See *Matter of West Virginia Pulp and Paper Company*, 81 N. L. R. B. 208, and cases cited therein.

⁵ See footnote 4, *supra*.

⁶ See *Matter of Lynn Gas and Electric Company*, 78 N. L. R. B. 3; *Matter of Boston Consolidated Gas Company*, 79 N. L. R. B. 337.

⁷ Cf. *Matter of Reynolds Metal Company*, 85 N. L. R. B. 110.

⁸ See *Matter of The Beattie Manufacturing Company*, 86 N. L. R. B., No. 101; *Matter of Western Condensing Company*, 85 N. L. R. B., No. 174; *Matter of Aluminum Ore Company*, 85 N. L. R. B. 121; *Matter of Kennecott Copper Corporation, Ray Mines Division, Haden Operations*, 84 N. L. R. B. 836; *Matter of Baugh and Sons Company*, 82 N. L. R. B. 1399; *Matter of West Virginia Pulp and Paper Company*, 81 N. L. R. B. 261.

However, we shall reserve final determination in this respect, pending the outcome of the election hereinafter directed.

We shall direct an election among the following group of employees at the Perth Amboy, New Jersey, plant, of the Employer excluding all other employees and supervisors as defined in the Act:

All powerhouse, boilerhouse and waste heat boiler employees, including engineers, boiler firemen, oilers, reliefmen, switchboard operators, repairmen, pipe fitters second class, water tenders, metermen, tube blowers, laborers, and monorail crane operators.

If a majority of the employees vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit.

DIRECTION OF ELECTION ⁹

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, 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 Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, 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 International Union of Operating Engineers, Local No. 480, A. F. of L.

⁹ We shall not place the Intervenor's name on the ballot as it has not complied with Section 9 (f), (g), and (h) of the Act, as amended.