

In the Matter of THE AMERICAN BRASS COMPANY and INTERSTATE COPPER AND BRASS WORKERS UNION, LOCAL 15, AFFILIATED WITH THE CONFEDERATED UNIONS OF AMERICA

Case No. 3-R-963.—Decided August 3, 1945

Kenefick, Cooke, Mitchell, Bass & Letchworth, by Messrs. *Lyman M. Bass* and *LeGrand F. Kirk*, of Buffalo, N. Y.; and Messrs. *F. J. Kane* and *H. R. Attmore*, of Kenmore, N. Y., for the Company.

Mr. Peter J. Crotty, of Buffalo, N. Y., for the Union.

Mr. Samuel G. Hamilton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Interstate Copper and Brass Workers Union, Local 15, affiliated with the Confederated Unions of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The American Brass Company, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. Said hearing was held at Buffalo, New York, on May 14 and May 22, 1945. The Company and the Union 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. At the hearing the Company moved to dismiss the petition. Ruling on this motion was reserved for the Board. For the reasons stated in Section IV, *infra*, the motion is hereby denied. The Trial Examiner's rulings made at the 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

The American Brass Company is a Connecticut corporation which operates a plant, involved in this proceeding, at Buffalo, New York.

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It is there engaged in the fabrication of copper and brass. During the year 1944, the Company purchased raw materials for its Buffalo plant valued in excess of \$16,000,000, of which more than 50 percent was shipped from points outside the State of New York. During the same period, the Company completed products at its Buffalo plant valued in excess of \$25,000,000, of which more than 50 percent was shipped to points outside the State.

The Company admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Interstate Copper and Brass Workers Union, Local 15, affiliated with the Confederated Unions of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 Union now represents all mill clerical employees of the Company's Buffalo, New York, plant, as the result of a certification issued by the Board on November 28, 1944.² It now seeks to merge with these employees in a single unit all office employees of the Buffalo plant with certain exclusions; in the alternative, it seeks a separate unit of such office employees.³ The Company claims that office employees

¹ The Field Examiner reported that the Union submitted 53 application cards, that the names of 46 persons appearing on the cards were listed on the Company's pay roll of March 25, 1945, which contained the names of 132 employees in the alleged appropriate unit, and that 7 of the cards were dated December 1944, 25 March 1945, 17 April 1945, and 4 were undated.

² See *Matter of American Brass Company*, 55 N. L. R. B. 245 (Decision and Direction of Election)

³ In broad terms, those whom the Union seeks are all employees in the main office and the mill office, except for 12 mill clerks, now part of the mill clerical unit, who are located in the mill office building. Generally, mill clerical employees work in the mill itself, main office employees work in the main office building, and mill office employees in the mill office building.

cannot be represented in any unit because of their alleged managerial and confidential functions. In the event, however, the Board disagrees with this position, it asks that the office employees sought by the Union be established as a unit separate and apart from the mill clerical employees.

There is no evidence to indicate that the employees whom the Union seeks to represent are in any way identified with management or that they have access to confidential information pertaining to the Company's labor relations. Consequently, we find no merit in the Company's contention that they should not be included in any bargaining unit.⁴ We do agree, however, that they should not be consolidated with the mill clerks in a single unit, but should be bargained for as a separate grouping. The mill clerks and the office employees have different vacation schedules and work different shifts. There is little interchange between the two groups. Moreover, they are hired through different agencies, and, with few exceptions, work and obtain their meals in different buildings. In addition, the mill clerks are generally paid on an hourly basis, while the office employees are paid a salary. Under these circumstances, we are of the opinion that the office employees should not be added to the unit of mill clerical employees which the Board previously established.⁵

We find, accordingly, that all office employees of the Company at its Buffalo, New York, plant, including the rationing clerk in the labor relations department, but excluding the first assistant to the branch accountant; the stenographer to the branch accountant; the office paymaster; the office cashier; the executive stenographers to the vice president, the manager, the two assistant managers, the superintendents, and the mechanical supervisors; the first assistant to the paymaster; the salesmen; the supervisors' first assistants in the technical, economy, superintendent's, mechanical, and production departments; all personnel in the labor relations department (except the rationing clerk); all company officials, 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, 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-

⁴ See *Matter of U. S. Automatic Corporation*, 58 N. L. R. B. 662; *Matter of Armour and Company*, 54 N. L. R. B. 1462; *N. L. R. B. v. Poultrymen's Service Corporation*, 138 F. (2d) 204 (C. C. A. 3).

⁵ See *Matter of American Brass Company*, *supra*.

roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The American Brass Company, Buffalo, 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 the 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 any 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 or not they desire to be represented by Interstate Copper and Brass Workers Union, Local 15, affiliated with the Confederated Unions of America, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.