

In the Matter of BETHLEHEM STEEL COMPANY *and* UNITED STEEL-
WORKERS OF AMERICA, C. I. O.

In the Matter of BETHLEHEM STEEL COMPANY *and* UNITED STEEL-
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*Cases Nos. 3-R-1016 and 3-R-1017, respectively.—Decided September
28, 1945*

Mr. Gerald J. Reilly, of Bethlehem, Pa., for the Company.

Mr. Julian R. Bruce, of Lackawanna, N. Y., for the Union.

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon separate petitions duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Lackawanna, New York, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. The hearing was held at Buffalo, New York, on July 12, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

The Company moved to dismiss the petition in Case No. 3-R-1016 on the ground that the individuals petitioned for are not employees within the meaning of the Act and, therefore, do not constitute an appropriate unit. For the reasons stated in Section IV, *infra*, this motion is hereby denied.

63 N. L. R. B., No. 193.

The Company also moved to dismiss the petition in Case No. 3-R-1017 on the grounds that all the employees petitioned for perform duties of a confidential nature and, therefore, do not constitute an appropriate unit, and, the unit is too small to effectuate the purposes of the Act. For the reasons stated in Section IV, *infra*, this motion is hereby granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company, a Pennsylvania corporation, operates a plant at Lackawanna, New York, where it manufactures steel products. During 1944 the aggregate value of raw materials used by the Company at its Lackawanna, New York, plant was in excess of \$6,000,000, of which more than 80 percent was delivered to the plant from points outside the State of New York. During the same period the Company manufactured at this plant finished products valued in excess of \$100,000,000, of which more than 80 percent was shipped to points outside the State of New York.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION IN CASE NO. 3-R-1016; THE ALLEGED QUESTION CONCERNING REPRESENTATION IN CASE NO. 3-R-1017

Case No. 3-R-1016

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's clerical employees in the Accounting Division 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

¹The Field Examiner reported that the Union submitted 61 authorization cards; that the names of 49 persons appearing on the cards were listed on the Company's pay roll of May 15, 1945; that there are approximately 118 employees in the appropriate unit; and that, of these cards, 14 were dated October 1944, 8 were dated November 1944, 1 was dated December 1944, 37 were dated May 1945, and 1 was undated.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company petitioned for herein, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

Case No. 3-R-1017

Since, as stated in Section IV, below, the bargaining unit sought by the Union in this case is inappropriate, we find that no question affecting commerce has arisen concerning the representation of employees of the Company petitioned for herein, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT IN CASE NO. 3-R-1016 THE ALLEGED APPROPRIATE UNIT IN CASE NO. 3-R-1017

Case No. 3-R-1016

The Union seeks a unit of all clerical employees in the Accounting Division of the Lackawanna plant of the Company, except for confidential employees, weighers, the employees listed in Appendix A, attached hereto, and all supervisory employees. The Company contends that the persons sought are not employees within the meaning of the Act, and do not, therefore, constitute an appropriate unit. To support its contention the Company argues that these persons are supervisory in their relation to other employees, and that the work performed by them is of a confidential nature. It also appears to argue that irrespective of whether or not the persons sought are supervisory or confidential within the meaning of the Board's customary definition of these terms, their duties and their union membership will evoke conflicting loyalties. If, however, the Board is of the opinion that the clerical personnel of the Accounting Division may form an appropriate unit, the Company, contrary to the Union, requests the exclusion of certain categories.

Assuming that the Accounting Division clericals are supervisory or confidential workers, it cannot be denied that in their relationship to the Company these individuals are its employees.² Furthermore, with the exception of those specific employees whom we hereinafter exclude, the employees sought are neither supervisory nor confidential. The Accounting Division of the Company is composed of three main departments, Cost, Payroll, and Tabulating. The employees of the Division keep company records, compiling and maintaining pay-roll and labor cost data. They do not assign, direct the work, or affect the status of other individuals, nor do they exercise any discretion in

² See *N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F (2d) 667 (C. C. A. 8).

connection with the establishment of wage rates. They are obligated to fulfill definite duties according to specific instructions. These individuals do not formulate or determine the Company's labor relations policy, and the fact that they have access to or possess pay-roll and labor cost information does not warrant a finding that they are "confidential employees."³

Also, there is nothing in our experience to lead us to conclude that the exercise by the Accounting Division clericals of rights under the Act is incompatible with their full and honest performance of duty. Nor do we believe a contrary conclusion is justified if the Union, which is now the bargaining representative of the production and maintenance employees, also becomes the agent of the clericals in the Accounting Division.⁴ The remedy for collusion, dishonesty, or disregard or neglect of duty, or other improper acts on the part of employees lies implicitly in the power of the Company to discipline and discharge employees.

Disputed categories

The parties disagree as to the clerks in the cashier's office; the clerk A who acts as assistant to the head receiving clerk; the clerk who acts as assistant to the head ledger clerk; the clerk who acts as assistant to the head inventory clerk; the stenographer and the clerk A in charge of the stenographic work in the Accounting Division and who act as confidential secretaries to the works accountant and the assistant works accountant; and the class A clerk in the Pay-roll Division who is responsible for the preparation of monthly reports. The Union desires their inclusion in the unit and the Company asks for their exclusion.

The clerks who work in the cashier's office: There are four employees in the Cashier's Division under the supervision of the head cashier. The two clerks A in dispute work in the cashier's office, while two other clerks work in a room across the hall from the cashier's office. One of the clerks A acts as assistant to the cashier, and takes the cashier's place in his absence. He is responsible for the posting of the cash book and for disbursements and receipts. He assists in checking endorsements and in the reconciliation of bond drafts; he also assists at the cashier's window. The duties of the other clerk A are similar in nature. He aids in the posting and "reconciling" of the cash books; "reconciles assets"; keeps records of "wage drafts from banks"; and distributes war bonds. Both clerks A assign work to the other clerks in the section.

³ See *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900

⁴ See *Matter of Armour and Company*, 49 N. L. R. B. 688; *Matter of Babcock & Wilcox Co.*, 52 N. L. R. B. 900; *Matter of Youngstown Sheet & Tube Company*, 52 N. L. R. B. 559.

Although it was testified that both clerks A have the power to recommend to the head cashier disciplinary action with respect to the other clerks, it appears that an independent investigation would be made by the head cashier or the Division heads before any positive action would be taken. Since it appears that they are not supervisory employees within the meaning of our customary definition, we shall include the clerks who work in the cashier's office in the appropriate unit.

Clerk who acts as assistant to the head receiving clerk; clerk who acts as assistant to the head ledger clerk; clerk who acts as assistant to the head inventory clerk: Although it was testified that these clerks, all of whom are clerks A, are designated as assistants to the section heads, it appears that none of them is listed as such, or bears this title on the Company's records. These employees assume the duties of the section heads in their absence. All assign work to the other employees in their sections and while they may recommend disciplinary action with respect to these employees to the section heads, it appears that such recommendations are thoroughly investigated and checked before being acted upon. Although they have access to the files in their sections, it does not appear that such files pertain directly to confidential labor relations matters or that they have any duties in connection with such matters as to warrant the conclusion that they are confidential employees. On the basis of the foregoing, we shall include the above clerks in the appropriate unit.⁵

The stenographer and clerk A who act as confidential secretaries to the works accountant and the assistant works accountant: There are four employees on the stenographic force. The two in question are in charge of the work of the force, assign work to the other stenographers, recommend wage increases for the other stenographers, and type all confidential letters, some of which contain advance information pertaining to the Company's labor relations. We shall exclude these employees from the appropriate unit as confidential employees.⁶

The class A clerk in the Pay-roll Division who is responsible for the preparation of monthly reports: This clerk works under the direct supervision of the chief and assistant chief of pay roll and is responsible for the preparation of statistical and other reports emanating from the Pay-roll Division. Included are pay-roll salary reports, wage data reports, and reports for the New York State Labor Department and the United States Department of Labor. He also

⁵ The Company in its brief states that there is a dispute as to the exclusion of the clerk who acts as assistant to the head product clerk. The record does not, however, indicate such to be the case. In any event, since it appears that this clerk's duties are substantially the same as the duties of the employees described above, we shall provide for his inclusion in the appropriate unit.

⁶ See *Matter of General Motors Corporation, Chevrolet Motors Division*, 53 N. L. R. B. 1096.

receives copies of reports from the State and Federal Departments of Labor; these reports are, however, also available to the general public and so may not be deemed to be confidential. Inasmuch as it does not appear that any of these reports relate directly to confidential matters affecting labor relations, we shall include in the unit the class A clerk in the Pay-roll Division who is responsible for the preparation of monthly reports.

We find that all clerical employees in the Accounting Division of the Lackawanna plant of the Company, including the clerks who work in the cashier's office, the clerk who acts as assistant to the head receiving clerk, the clerk who acts as assistant to the head ledger clerk, the clerk who acts as assistant to the head inventory clerk, the clerk who acts as assistant to the head product clerk, and the class A clerk in the Pay-roll Division who is responsible for the preparation of monthly reports, but excluding the stenographer and clerk A who act as confidential secretaries to the works accountant and the assistant works accountant, confidential employees, weighers, the employees listed in Appendix A, and all or any other 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.

Case No. 3-R-1017

The Union in this case seeks a unit of all clerical employees employed in the Open Hearth offices, except for chief clerks, confidential employees, and all supervisory employees. The Company contends that all the employees in the unit are confidential employees. It contends, in its alternative position, that the petition be dismissed inasmuch as the unit, after excluding confidential employees, would be too small to effectuate the purposes of the Act.

There are three Open Hearth departments, each having a chief clerk and a class B clerk. A chief clerk and clerk C are also employed on the personal staff of the superintendent of the Steel or Open Hearth Division, and there is a clerk C employed in the No. 1 Open Hearth.

The three class B clerks in the Open Hearths share the offices of their respective chief clerks, and assume the duties of the chief clerk every Friday for a few hours, and on one full day, the seventh day each week. In the absence of the chief clerk, the B clerks attend superintendents' meetings at which are discussed various operating and policy problems, including some which relate to labor relations. The clerks also type out and assist in the compilation of grievance data which is used by the Company in the various steps of the grievance procedure established for production and maintenance employees in the Open

Hearths. In view of the duties of the B clerks in connection with the typing and compiling of grievance data, which would enable them to obtain advance information concerning grievances, and the fact that they attend superintendents' meetings at which problems relating to labor relations are discussed, we shall exclude the B clerks as confidential employees.⁷

The C clerk who works for the superintendent of the Open Hearth Division shares the office of the chief clerk who is also on the superintendent's personal staff, is responsible for keeping a record of the "life" of the moulds used in the Open Hearths, and prepares a monthly report on the moulds based on the figures received during the month. This clerk also makes a record of new moulds as received, and takes dictation and types letters for the superintendent, which include letters regarding discharge or proposed discharge of employees, promotions, and grievances. All files and correspondence of the superintendent, including files relating to labor relations, are available to the clerk C. From the nature of his duties we conclude that the clerk C who works for the superintendent of the Open Hearth Division is employed in a confidential capacity, and we shall exclude him.

The other clerk C in the Open Hearth Division is responsible for the compilation of heat data, and clearly is not a confidential or supervisory employee. However, the Board has frequently held that the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain and that the National Labor Relations Act therefore does not empower the Board to certify where only one employee is involved. Since, in the absence of a sufficient number of eligible employees, the bargaining unit sought in Case No. 3-R-1017 is inappropriate, we shall dismiss the petition.⁸

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 payroll 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

⁷ See *Matter of General Motors Corporation, Chevrolet Motors Division*, 53 N. L. R. B. 1096.

⁸ See *Matter of Burke Brewery, Inc.*, 54 N. L. R. B. 1061.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bethlehem Steel Company, Lackawanna, 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 or not they desire to be represented by United Steelworkers of America, C. I. O., for the purposes of collective bargaining.

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Bethlehem Steel Company, Lackawanna, New York, filed by United Steelworkers of America, C. I. O., in Case No. 3-R-1017, be, and it hereby is, dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision, Direction of Election, and Order.

APPENDIX A

Works accountant	Head weigher
Assistant works accountant	Supervisor of pay rolls
Chief of cost	Supervisor of the tabulating section
Cashier	Head timekeeper
Chief of pay roll and tabulating	Assistant head timekeepers
Assistant chief of pay roll and tabulating	Special clerks in the Cost Division and the Pay-roll and Tabulating Division
Head receiving clerk	Plant clerk
Head product clerk	Class A clerk who acts as head order clerk
Head ledger clerk	
Head inventory clerk	
Head shipment clerk	