

In the Matter of ST. JOSEPH LEAD COMPANY and UNITED STEELWORKERS OF AMERICA, CIO.

Case No. 3-R-1045.—Decided October 12, 1945

Cullen, Morris, Reynolds and Tripp, by Mr. George S. Tripp, of Watertown, N. Y., and Mr. R. J. Mechin, of Belmont, N. Y., for the Company.

Mr. Adron Coldiron, of Tupper Lake, N. Y., for the CIO.

Mr. John J. Walsh, of Utica, N. Y., for the AFL.

Miss Helen Hart, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of St. Joseph Lead Company, Balmat, 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. At the commencement of the hearing, the Trial Examiner granted a motion to intervene made by Federal Labor Union No. 21305, AFL, herein called the AFL. The hearing was held at Gouverneur, New York, on August 14, 1945. The Company, the CIO, and the AFL appeared, participated, and 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 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

St. Joseph Lead Company, a New York corporation, operates two mines, one at Edwards, New York, and the other at Balmat, New York.
64 N L R B, No. 25.

York, where it extracts zinc, refining it in the mills located at the surface of each of the mines. Both the mines and the mills at Edwards and Balmat are involved in this proceeding. From August 1, 1944, until August 1, 1945, the Company used raw materials valued in excess of \$200,000, of which 75 percent was shipped to the Company from points outside the State of New York. During the same period, it mined and milled materials valued in excess of \$500,000, of which more than 95 percent was transported to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

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

Federal Labor Union No. 21305, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1938, the Company began bargaining with the AFL as the representative of employees of the Balmat mine. Between 1938 and 1942 the bargaining unit was gradually expanded, and in 1942 the Company and the AFL signed a collective bargaining agreement covering both mine and surface employees at the Company's Edwards and Balmat operations. The AFL continued to represent the employees in this unit until July 25, 1944, when it negotiated two written contracts with the Company, one covering employees at the mines at Edwards and Balmat, and the other covering the Company's surface plant employees at these two locations. These contracts, effective as of August 2, 1944, were to continue in force until August 2, 1945, and remain operative for another year thereafter, unless terminated by written notice by either party 30 days prior to that date. In addition, a supplementary agreement, governing wages at all the Edwards and Balmat operations, was executed on the same day, effective for the same period, and containing the same termination provision found in the basic 1944 contracts. On June 1, 1945, the Wage and Hour Division of the Department of Labor began an investigation of certain of the Company's wage rates.¹ This investigation was not concluded at the time of the hearing.

¹The Company's division manager testified that the figuring of base rates where bonuses were involved and the wages paid to certain foremen were the matters under investigation.

On June 18, 1945, the CIO, by letter to the Company, requested recognition as bargaining agent for the production and maintenance employees at Edwards and Balmat. The Company, in reply, refused to recognize the CIO until the latter had been certified by the Board. The AFL notified the Company 30 days prior to the 1945 anniversary date of the 1944 contracts of its desire for changes in the agreements, in accordance with their termination provisions.

The AFL concedes that the 1944 contracts do not bar this proceeding,² but it contends that the investigation by the Wage and Hour Division of the Labor Department precludes a determination of representatives at this time. The Company assumes a neutral position regarding this issue. We find no merit in the AFL's contention. It is true that the Board has refused to proceed to a determination of representatives in some cases where proceedings were pending before the National War Labor Board.³ But the Wage and Hour Division investigation is in no way comparable to such proceedings, and the considerations which have led us to defer determinations of representatives when matters were before the National War Labor Board are not present in the instant case. Assuming, however, that the investigation is of the same effect as proceedings before the National War Labor Board, dismissal of the CIO's petition is not warranted. For at the time of the Wage and Hour Division investigation, the AFL was not a newly recognized or newly certified bargaining agent, having represented employees of the Company for 7 years and having obtained for them substantial collective bargaining benefits.⁴ Accordingly, we find that the investigation of the Wage and Hour Division of the Labor Department does not bar a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 CIO contends that the following unit is appropriate: all production and maintenance employees of the Company's operations, at

² Quite obviously they do not. See *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406; *Matter of American Woolen Company (Webster Mills)*, 57 N. L. R. B. 647.

³ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1140.

⁴ See *Matter of Aluminum Company of America*, 58 N. L. R. B. 24; *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802.

⁵ The Field Examiner reported that the CIO submitted 135 authorization cards; that the names of 128 persons appearing on the cards were listed on the Company's pay roll of June 23, 1945; that the AFL relied on its contracts as evidence of interest; and that there were 196 employees in the alleged appropriate unit.

Edwards and Balmat, including all warehouse clerks (both surface and mine warehouses), surveyors, the assistant engineer, the head blacksmith, and the head painter,⁶ but excluding office and salaried employees, temporary employees,⁷ bosses, foremen, superintendents, executives, and all other supervisory employees. The AFL and the Company are in agreement with the CIO as to the scope of the unit, but the Company would exclude the assistant engineer as a supervisory employee. The AFL takes no position in regard to this employee.

The assistant engineer works directly under the mining engineer of the Balmat plant and assists him in laying out work. The assistant does some surveying jobs and he directs the work of two surveyors who are under him. The surveyors frequently require assistance from other employees of the plant and these men, while helping the surveyors, are supervised by the assistant engineer. He has authority to recommend discharges or changes in the position of the surveyors and, in the absence of the mining engineer, he has the power to hire or discharge these men on his own initiative. Since the assistant engineer appears to possess supervisory authority within the meaning of our customary definition, we shall exclude him from the unit.

We find that all production and maintenance employees of the Company's operations at Edwards and Balmat, including mine and surface warehouse clerks, surveyors, the head blacksmith, and the head painter, but excluding office and salaried employees, temporary employees, bosses, the assistant engineer, foremen, superintendents, executives, and all 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.

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.

⁶ The record reveals that neither the head blacksmith nor the head painter possesses supervisory authority within the meaning of our customary definition, and that they have been covered by contracts between the AFL and the Company.

⁷ There are 13 temporary employees whose employment, the parties anticipated, would terminate in September or October 1945.

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 St. Joseph Lead Company, Balmat, 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 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 they desire to be represented by United Steelworkers of America, CIO, or by Federal Labor Union No. 21305, AFL, for the purposes of collective bargaining, or by neither.

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