

In the Matter of AMERICAN SMELTING AND REFINING COMPANY and  
A. S. & R. FOREMEN'S ASSOCIATION

*Case No. 4-R-1787.—Decided March 8, 1946*

*Mr. R. Worth Vaughan*, of New York City, and *Mr. K. Harms*, of Perth Amboy, N. J., for the Company.

*Mr. Samuel Sladkus*, of Perth Amboy, N. J., for the Union.

*Mr. Seymour Cohen*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by A. S. & R. Foremen's Association, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Smelting and Refining Company, Perth Amboy, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. The hearing was held at Perth Amboy, New Jersey, on August 9, 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 on the following grounds: (1) the foremen sought to be included in the alleged appropriate unit are not "employees" within the meaning of the National Labor Relations Act, and (2) the unit sought is not appropriate because the foremen are a part of management and the establishment of such a collective bargaining unit would not effectuate the policies of the Act. The Trial Examiner referred this motion to the Board. For reasons stated hereinafter, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Inasmuch as all parties have taken advantage of the opportunity

afforded them to file briefs, and these briefs fully discuss the issues, the Company's request for oral argument is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

American Smelting and Refining Company, a New Jersey corporation, is engaged in the mining, smelting, and refining of non-ferrous metals, particularly lead, copper, and zinc. It operates about 30 smelting and refining plants and about 18 mines in the United States, Mexico, and South America, including the refinery at Perth Amboy, New Jersey, with which we are here solely concerned.<sup>1</sup> The annual gross value of the raw materials used at the Perth Amboy, New Jersey, plant exceeds \$40,000,000, of which 95 percent is shipped from points outside the State of New Jersey. The gross annual business of the Company at this plant exceeds \$40,000,000. It was stipulated at the hearing that substantially all the Company's products went either directly or indirectly into the war effort.

The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

The A. S. & R. Foremen's Association is an independent labor organization, admitting to membership supervisory 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 its foremen and non-working assistant foremen until the Union has been certified by the Board in an appropriate unit.

In support of its motion to dismiss the petition, the Company contends that the foremen sought to be included in the alleged appropriate unit are not "employees" within the meaning of the Act. In the *Young* case,<sup>2</sup> we recently had occasion to reaffirm our holding in the *Packard*<sup>3</sup> and *Soss*<sup>4</sup> cases that foremen, in relation to their em-

<sup>1</sup> The Perth Amboy, New Jersey, plant includes a division known as the Federated Metals Division, which is also involved in this proceeding.

<sup>2</sup> See *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298, and cases cited therein.

<sup>3</sup> *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and 64 N. L. R. B. 1212

<sup>4</sup> *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348.

ployer, are "employees" within the meaning of the Act. In accord with these prior determinations, we find that the foremen involved in the present proceeding are "employees" within the meaning of the Act.

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.<sup>5</sup>

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's petition, as amended at the hearing, seeks a unit including all foremen, assistant general foremen, and non-working assistant foremen who are on a salary basis, but excluding general foremen. The Company makes no contention as to the composition of the unit, but takes the position that a unit of foremen is inappropriate, both because foremen are a part of management and because the establishment of such a unit would not effectuate the policies of the Act.

The Company attempts to distinguish this case from the *Packard* case, wherein we rejected contentions similar to those made by the Company, on the grounds that the authority and responsibilities of the foremen here concerned are much broader than those of the foremen in that case, so that we are not dealing here with mere "traffic cops" of industry; that there are here no highly-integrated production units such as are found in mass production industries; and that there is no need here for collective bargaining by supervisory employees as was alleged in that case. But we held in the *Young* case, as we do here, that the application of the Act to foremen does not depend upon the variation in the duties and responsibilities of foremen from company to company or upon the type of industry involved, whether mass production or non-mass production; and that, as "employees," foremen are entitled to be placed in some appropriate unit under Section 9 (b).

The Company insists that the Union is not sufficiently independent of the International Union of Mine, Mill & Smelter Workers, CIO,<sup>6</sup> which represents the Company's production and maintenance employees, to be eligible to represent the foremen here involved. The evidence is undisputed that it was originally the intention of the employees who formed the Union to affiliate with the Smelter

<sup>5</sup> The Field Examiner reported that the Union submitted 66 authorization cards dated May 1945. There are approximately 89 employees in the appropriate unit.

<sup>6</sup> Herein called the Smelter Workers.

Workers, and that several of the Smelter Workers' representatives attended several meetings held by such employees. Upon being informed, however, that the Smelter Workers did not admit foremen to membership, the employees went on to create the Union as an independent and unaffiliated labor organization, with eligibility for membership limited to all salaried foremen of the Company below the rank of general foremen. There is no showing that the Union is not free to formulate its own policies, to decide its own course of action, and to make its own collective bargaining contracts. Accordingly, we find that the Union is an independent and unaffiliated labor organization, admitting to membership exclusively all salaried foremen below the rank of general foremen, at the Company's Perth Amboy, New Jersey, plant.

We find, therefore, that all salaried foremen, assistant general foremen, and non-working assistant foremen employed by the Company in its Perth Amboy, New Jersey, plant, excluding general foremen, 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 employees in the appropriate unit who were employed during the pay-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 American Smelting and Refining Company, Perth Amboy, New Jersey, 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 Fourth 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 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 A. S. & R. Foremen's Association, for the purposes of collective bargaining.

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