

IN the Matter of ALPINE TRADING CO. AND EUTECTIC WELDING ALLOY
CORP., EMPLOYER and FEDERAL LABOR UNION LOCAL #21862, A. F. L.,
PETITIONER

Case No. 2-RC-84.—Decided May 19, 1948

Mr. Mark Lauter, of New York City, for the Employer.

Messrs. John L. Makowski, of Long Island City, N. Y., and *James J. Burke*, of New York City, for the Petitioner.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition¹ duly filed, hearing in this case was held at New York City, on January 27, 1948, before Herbert C. Kane, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board² makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Alpine Trading Co., a partnership consisting of Mr. and Mrs. R. D. Wasserman, and Eutectic Welding Alloy Corp., a New York corporation, herein together called the Employer,³ have their office and principal place of business in New York City, where they are jointly engaged in the manufacture and sale of rods and fluxes for electric and gas welding. The Employer annually purchases raw materials, consisting principally of metals and their alloys, and heavy chemicals, from points outside New York State, in an amount in excess of a half

¹The Petitioner moved to amend the petition at the hearing to correct certain typographical errors. The motion was granted without objection.

²Pursuant 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-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Murdock and Gray].

³The partnership and the corporation in effect concede, and we find, that they constitute a single employer, within the meaning of the Act, of the employees herein involved.

million dollars. It annually ships finished products outside the State in excess of a half million dollars.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that 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.

IV. THE APPROPRIATE UNIT

The Petitioner requests a unit composed of all production and maintenance workers at the Employer's plant ⁴ at 108-110 Duane St., New York City, and warehouse at 98 Duane St., including the warehouseman, messenger, elevator operator, porter, shipping and receiving employees, addressograph operators, and working foremen, but excluding office employees, technical workers, statistical clerks, and supervisors. The Employer agrees that office employees and supervisors should be excluded, but contends that the technical workers and statistical clerks should be included. Otherwise, the Employer takes no position as to the specific composition of the appropriate unit.

Technical workers. There are two chemists, a metallurgist, and a welder in this category. The chemists analyze, for control purposes, incoming raw materials and the welding fluxes which the Employer manufactures. One is a graduate chemist who performs more difficult chemical analyses; the other is a laboratory assistant whose duties are to perform the more routine chemical tests, and to prepare small batches of special flux which it is uneconomical to run on the Employer's regular machinery. The employee in the metallurgical laboratory has had some technical metallurgical training, but his work is mainly that of a foundryman. He prepares small batches of,

⁴The employees of the partnership and the corporation are carried on a single pay roll. The parties agree that these employees constitute a single appropriate unit.

and does experimental work with, newly developed alloys. The welder tests the fluxes and welding rods manufactured by the Employer, in actual welding operations, and prepares samples of welds for the Employer's field engineers.

In view of the training and skill of the graduate chemist, and the technical nature of the duties which he performs, we shall, in accordance with our practice,⁵ exclude him from the unit. It is apparent, however, that the work of the chemical laboratory assistant, metallurgical worker, and welder, insofar as it is not actual production work, consists of the performance of routine tests not involving the exercise of advanced technical knowledge or skill. We believe that these employees possess interests in common with the production employees, and we shall include them in the unit.⁶

Statistical clerks. There are three employees in this group, working on "statistical information for production." Their place of work is on the first floor of the Employer's plant, where the offices and the greater part of the shipping and receiving department are located. Their supervisor is in charge of purchasing welding machinery and parts, and acts as an assistant to one of the corporation's officers. It is our opinion that the work of the statistical clerks is more nearly related to that performed by the general office employees than to that performed by the production workers. We shall, therefore, exclude them from the unit.

Working foremen. There are three employees in this group. The parties have agreed to include them in the unit. The record discloses that they spend a majority of their time performing manual labor with the employees in their respective gangs. Although they may "suggest" to their supervisors the hiring or discharge of other employees, such recommendations are not given effective weight. They do not have authority to adjust grievances. Their directions to the employees with whom they work consist merely of passing on the instructions of the department heads. We believe that the working foremen are not supervisors within the meaning of the amended Act, and we shall therefore include them in the unit in accord with the parties' agreement.

We find that all production and maintenance workers of the Employer at 98 Duane St., and 108-110 Duane St., New York City, including the warehouseman, messenger, elevator operator, porter, shipping and receiving employees, addressograph operators, working foremen, chemical laboratory assistant, metallurgist, and welder, but ex-

⁵ *Matter of American Cyanamid & Chemical Corporation*, 62 N L R B 925; *Matter of Neptune Meter Company*, 67 N L R B 949

⁶ *Matter of Laclede Steel Company*, 62 N L R B 747

cluding office employees, the graduate chemist, statistical clerks, and all or any other supervisors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Alpine Trading Co. and Eutectic Welding Alloy Corp., New York City, 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 Second Region, and subject to Sections 203.61 and 203.62, of National Labor Relations Board Rules and Regulations—Series 5, 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, 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 by Federal Labor Union Local #21863, A. F. L., for the purposes of collective bargaining.