

IN the Matter of MINNESOTA MINING AND MANUFACTURING COMPANY
and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO.
36, A. F. OF L.

Case No. 18-R-889.—Decided April 13, 1944

Messrs. Robert H. Tucker and Lyle H. Fisher, both of St. Paul, Minn., for the Company.

Messrs. S. Robins and Herbert N. DePaul, both of Minneapolis, Minn., for the Engineers.

Messrs. Douglas Hall and Kenneth J. Enkel, both of Minneapolis, Minn., and *Messrs. Walter J. Schmidt and Robert Madigan*, both of St. Paul, Minn., for the C. I. O.

Lipschultz, Serbine and Lipschultz, by *Messrs. Samuel Lipschultz and W. W. Serbine*, both of St. Paul, Minn., and *Messrs. Clarence Troskey, Lyden Hathaway, and Peter Schwartz*, all of St. Paul, Minn., for the Independent.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local No. 36, A. F. of L., herein called the Engineers, alleging that a question affecting commerce had arisen concerning the representation of employees of Minnesota Mining and Manufacturing Company, St. Paul, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on February 3 and 4, 1944. The Company, the Engineers, United Gas, Coke and Chemical Workers of America, Local 75, affiliated with the C. I. O., herein called the C. I. O., and Minnesota Mining Employees Independent Union, herein called the Independent, 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

Minnesota Mining and Manufacturing Company, a Delaware corporation with its principal office and place of business located at St. Paul, Minnesota, is engaged in the manufacture of abrasive materials, pressure sensitive tapes, roofing granules, and chemicals. The Company operates plants at Wausau, Wisconsin, Detroit, Michigan, Copley, Ohio, and St. Paul, Minnesota. The St. Paul plant is involved in this proceeding. During the year 1943 the Company purchased raw materials for use at said plant in an amount exceeding \$1,000,000, more than 80 percent of which was shipped to the plant from points located outside the State of Minnesota. During the same period 80 percent of the finished products of said plant, valued in excess of \$1,000,000, was shipped by the Company to points located outside the State of Minnesota. Approximately 90 percent of the finished products of the Company are sold as the result of direct or indirect contracts relating to the national war effort.

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

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local No. 36, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Gas, Coke and Chemical Workers of America, Local 75, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Minnesota Mining Employees Independent Union is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In a letter dated October 21, 1943, the Engineers enclosed a proposed contract covering the Company's boiler room employees and requested a conference for the purposes of collective bargaining. The Company replied by letter dated November 2, 1943, refusing recognition to the Engineers as the bargaining representative of the boiler room employees until it has been certified as such by a recognized agency.

Statements of the Board's Field Examiner and Trial Examiner, introduced into evidence at the hearing, indicate that the Engineers 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 Engineers seek a unit comprised of all boiler room employees at the St. Paul plant of the Company, excluding supervisory employees and all other employees. The Company, the C. I. O., and the Independent contend that the proposed unit is inappropriate, and that only a plant-wide industrial unit is proper. However, in the event the Board finds the proposed unit appropriate, these three parties agree that the boiler room superintendent and the foremen who assist him should be excluded as supervisory employees, but disagree among themselves with respect to part-time and seasonal employees. The Company would exclude part-time and seasonal employees from the unit, whereas all the labor organizations, including the Engineers, would include them.

The St. Paul plant is composed of a series of connected buildings housing the several departments into which the plant is divided. The boiler room, a separate department of the Company, is located in the main building which also contains six other departments. The boiler room produces steam for heating and processing purposes throughout the plant.² The boiler room personnel consists of 32 regular full-time employees and 5 part-time or seasonal employees under the supervision of a boiler room superintendent and several foremen. These 37 employees are classified by the Company as firemen or operators, firemen helpers, boiler room helpers, scrap burners,³ and filter changers. Their duties are concerned solely with the operation and maintenance of the boilers and appurtenant equipment

¹ The statements of the Field Examiner and the Trial Examiner with respect to the designations submitted by the labor organizations which bear apparently genuine, original signatures of persons whose names appear upon the Company's pay roll dated January 15, 1944, may be summarized by the following chart:

Name of organization:		Designations
Engineers-----	21	(23 submitted)
C. I. O.-----	5	(5 submitted)
Independent-----	1	(1 submitted)

The above-mentioned pay roll contains the names of 39 employees in the unit hereinafter found appropriate.

² The Company also operates an additional boiler located in another building. This boiler is part of the boiler room department, and is attended by a single part-time employee under the supervision of the boiler room supervisors. This employee is classified as a boiler room employee.

³ These employees are now classified as boiler room helpers.

throughout the plant. During the past 6 months, except for three transfers from the boiler room to production departments and one transfer from a production department to the boiler room, there has been no interchange of personnel. Furthermore, there appears to be little occasion for employees other than boiler room workers to enter the boiler room, although the boiler room helpers, in the course of their duties, sometimes perform work outside the confines of the boiler room amounting in all to approximately 40 man-hours per week. The boiler room employees, together with all other employees, are accorded the same treatment by the Company with respect to wage increases, production bonuses, vacations, and insurance. But the Company's seniority policy is based wholly upon service within a department. The foregoing facts clearly indicate that boiler room employees comprise a functionally coherent and identifiable group,⁴ separable from other employees of the Company.⁵

Between 1933 and 1943 the Company had bargained collectively with a labor organization known as the 3-M Association as the collective bargaining agency of all its employees in the St. Paul plant. However, pursuant to charges filed with the Board by the C. I. O.,⁶ alleging that the relationship between the Company and the 3-M Association was violative of Section 8 (2) of the Act, the Company, on January 4, 1944, notified the 3-M Association that it would no longer be recognized as the bargaining representative of the employees. Since that date the Company has not bargained collectively with any labor organization. In view of these circumstances, we do not find the past history of collective bargaining in any way controlling upon the unit issue herein.

The Engineers would include within its proposed unit the boiler room superintendent and the foremen unless such employees are found by the Board to be supervisory. The record discloses that the boiler room superintendent has authority to hire and discharge, and that the foremen assisting him have authority to recommend such action. Accordingly, we find that the superintendent and foremen are supervisory employees within our customary definition, and we shall exclude them from the unit.

We have previously noted that the Company would exclude from any unit all part-time and seasonal employees. The Company, as also noted above, employs in its boiler room five such employees who perform their duties on definite time schedules. These employees, with the

⁴ See *Matter of Trojan Powder Company*, 46 N. L. R. B. 403.

⁵ See *Matter of General Foods Corporation*, 54 N. L. R. B. 596, and *Matter of General Electric Company*, 42 N. L. R. B. 569, wherein similarly engaged employees were accorded an opportunity to express a preference for representation separate from the remaining industrial employees of the Company.

⁶ Case No. 18-C-992

exception of the one seasonal employee employed at the time of the hearing, acquire seniority rights within the department, but do not participate in such benefits as insurance, profit-sharing, and bonuses. However, the evidence reveals that both part-time and seasonal employees perform regularly assigned tasks, and that the Company would accord them a preference over newcomers with regard to permanent employment. In view of the foregoing, we are of the opinion that such employees have sufficient interests in common with the regular full-time boiler room employees to warrant their inclusion.⁷

We find that all boiler room employees at the St. Paul plant of the Company, including firemen or operators, firemen helpers, boiler room helpers, scrap burners, and filter changers, whether regular, seasonal, or part-time, but excluding the superintendent, foremen, all other supervisory employees of the Company with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and all other employees of the Company, 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. Both the Company and the Independent contend that the Board should make provision for voting in any such election by employees of the Company who are now in the armed services. Since, as we fully stated in *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. No. 215, Case No. 6-R-859, it is administratively impracticable to provide for mail balloting of employees on military leave who are unable to appear at the polls and a safeguard will be established for their interests, only those employees in the armed forces of the United States who present themselves in person at the polls will be permitted to vote. We shall direct that the employees of the Company eligible to vote in the election shall be those 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.⁸

⁷ See *Matter of Montgomery Ward and Company*, 38 N. L. R. B. 297; *Matter of Kungand Co., Inc.*, 37 N. L. R. B. 716.

⁸ Since we are directing an election, despite the showings of representations made by the C. I. O. and the Independent, we shall accord each of these organizations a place upon the ballot. The Engineers requested that it be designated upon the ballot as "Operating Engineers, Local 36, A. F. of L.," the C. I. O. requested that it be designated as "Local 75, United Gas, Coke and Chemical Workers, C. I. O.," and the Independent requested that it be designated as "Employees Organization." These requests are hereby granted. In the event one of these organizations wins the election, however, we shall certify it as its full name appears in the "Statement of the Case," *supra*

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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Minnesota Mining and Manufacturing Company, St. Paul, Minnesota, 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 Eighteenth 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 they desire to be represented by Operating Engineers, Local 36, A. F. of L., by Local 75, United Gas, Coke and Chemical Workers, C. I. O., or by Employees Organization, for the purposes of collective bargaining, or by none of these labor organizations.