

In the Matter of BLACKWELL ZINC COMPANY, INC. and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, C. I. O., FOR ITSELF AND IN BEHALF OF ITS LOCAL NO. 411

*Case No. 16-R-893.—Decided May 25, 1944*

*Mr. Felix Duwall*, of Ponca City, Okla., and *Mr. R. C. Weisbrod*, of Blackwell, Okla., for the Company.

*Mr. Gobel Cravens*, of Joplin, Mo., and *Mr. W. L. Coates* for the C. I. O.

*Mr. C. W. Schwoerke*, of Oklahoma City, Okla., *Mr. Phil Taylor*, of Tulsa, Okla., *Mr. Paul Smith*, of Blackwell, Okla., and *Mr. Ray Byler*, for the A. F. L.

*Mr. Robert E. Tillman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union of Mine, Mill and Smelter Workers, C. I. O., for itself and in behalf of its Local No. 411, herein called the C. I. O.,<sup>1</sup> alleging that a question affecting commerce had arisen concerning the representation of employees of Blackwell Zinc Company, Inc., Blackwell, Oklahoma, herein called the Company,<sup>2</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner.<sup>3</sup> Said hearing was held at Blackwell, Oklahoma, on May 2, 1944. The Company, the C. I. O., and Smelter Workers Federal Labor Union No. 21538, herein called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the

<sup>1</sup> The name of the C. I. O. appears in the caption and body of this Decision as it was amended at the hearing.

<sup>2</sup> In the formal papers of this proceeding the Company is designated as "Blackwell Zinc Company." Its name appears in the caption and body of this Decision as it was amended at the hearing.

<sup>3</sup> The C. I. O. waived the charges of unfair labor practices which it filed against the Company in Case No. 16-C-1062, insofar as they might constitute a basis for objecting to the instant proceeding.

issues. The rulings of the Trial Examiner 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 A. F. L. moved at the hearing to dismiss the petition of the C. I. O. on the grounds that the latter had made no showing of substantial interest, that its petition was not timely, and that the unit it seeks is inappropriate. Ruling on the motion was reserved for the Board. As indicated hereinafter, we find no merit to any of the grounds asserted by the A. F. L. for dismissal. Accordingly, the motion to dismiss is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Blackwell Zinc Company, Inc., is a wholly owned subsidiary of American Metal Company, of New York City. The Company operates a smelter at or near Blackwell, Oklahoma, where it is engaged in zinc smelting. During the past year the Company obtained the bulk of its raw materials, consisting principally of zinc ores and coal, from points outside the State of Oklahoma. During the same period, the Company produced approximately 5,000 finished metal zinc slabs per month. The value of the raw materials used and the finished products made by the Company is substantial.

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 Mine, Mill and Smelter Workers and its Local No. 411 are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Smelter Workers Federal Labor Union No. 21538 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On April 4, 1944, representatives of the C. I. O. conferred with officials of the Company and requested collective bargaining rights. The Company refused to recognize the C. I. O. on the ground that its employees were covered by an agreement with the A. F. L. The A. F. L. now urges that this agreement is a bar to a present determination of representatives.

The agreement to which reference is made was entered into on May 27, 1943. By its terms it is effective until June 3, 1944.<sup>4</sup> Since the contract is about to expire, it clearly does not preclude the Board from making an investigation and determining a bargaining representative of the Company's employees for the purpose of negotiating a new contract for the period following June 3, 1944.<sup>5</sup>

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit alleged to be appropriate.<sup>6</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 C. I. O. seeks a unit of all production and maintenance employees of the Company, except supervisory officials, foremen, subforemen, clerical workers, technicians, watchmen, monthly paid employees, and all others with authority to discharge or recommend discharge. The Company and the A. F. L. oppose the unit proposed by the C. I. O. insofar as it would exclude watchmen and so-called subforemen. The parties are also in dispute as respects the clerical status of two employees.

On April 4, 1939, a consent election was conducted under the auspices of the Board among all employees of the Company, with the exception of clerical, supervisory, and laboratory employees. Both the A. F. L. and the C. I. O. participated in the election. The A. F. L. won and has had contractual relations with the Company since, covering all employees except those engaged in official, supervisory, or clerical capacities.

*Watchmen:* The Company employs five watchmen. Although three of them are armed and deputized, none of the five has been sworn into the auxiliary military police. The record is clear that the watchmen have been represented by the A. F. L., along with other production and

<sup>4</sup> On March 21, 1944, the Company and the A. F. L. executed a supplement to the May 27, 1943 contract which did not alter the period of its duration.

<sup>5</sup> See *Matter of LaPlant-Choate Manufacturing Co., Inc.*, 29 N. L. R. B. 40.

<sup>6</sup> The Field Examiner stated that the C. I. O. submitted to him 233 authorization cards, all but 4 of which were dated in 1944. There are at present 806 employees in the Company's employ. The A. F. L. relies upon its contract with the Company to show its interest. The A. F. L. attacks the report of the Field Examiner because it does not indicate that any comparison was made of names appearing on the cards with names on the Company's pay roll, and there is no indication that the signatures on the cards are genuine, or that the dates are correct. With respect to these contentions, it is to be noted that the evaluation of authorization cards is an administrative matter, wholly within the discretion of the Board, and not subject to either direct or collateral attack by the parties to a representation proceeding. See *Matter of Western Cartridge Co., Winchester Repeating Arms Co. Division, et al.*, 56 N. L. R. B. 332; and *Matter of American Finishing Company*, 54 N. L. R. B. 996.

maintenance employees, in collective bargaining relations with the Company and are covered by the current contract. We see no reason to alter the existing contract unit by the exclusion of watchmen. Accordingly, we shall include them in the appropriate unit.

*So-called subforemen:* The C. I. O. indicated that in seeking the exclusion of "subforemen" from the unit, it had reference to gang pushers, a carpenter foreman, a brick mason foreman, a track foreman, and an assistant pottery foreman. The employees designated by the C. I. O. as within these classifications have, like the watchmen, been represented by the A. F. L. and are covered by the current contract. Unless the status of these employees is such as to warrant their exclusion as supervisory employees within the meaning of the *Maryland Drydock decision*,<sup>7</sup> we are of the opinion that the existing contract unit should not be altered by their exclusion.

The Company employs only 3 gang pushers who are assigned to its furnace department under the supervision of the general furnace foremen and the assistant general furnace foreman. Each of the gang pushers has under his direction a crew ranging in number from 50 to 60 men. Each relays instructions to these men from the foreman and his assistant, lays out the work, and instructs inexperienced employees. The gang pushers seldom perform any manual labor except in emergencies. They are hourly paid, at a rate which exceeds by a dollar a day the rate of the highest paid man in the gang. They have no authority to hire or to discharge, but recognition is given by the Company to their recommendations concerning employees under them. Although the supervisory power of the gang pushers cannot be said to be extensive, we are of the opinion that their duties and responsibilities are such as to require their exclusion from the appropriate unit.<sup>8</sup>

The individual designated by the C. I. O. as carpenter foreman, appears on the Company's pay roll as head carpenter. He directs the work of a varying number of carpenters and helpers, not exceeding eight, carrying out the orders of the construction foreman and the assistant master mechanic. He has no authority to hire or discharge, or effectively to recommend such action. He works with the other carpenters and receives an additional 50 cents a day for his added responsibility.

The individual designated by the C. I. O. as brick mason foreman appears on the pay roll simply as brick mason. Ordinarily he has no one under him, and is engaged in brick laying, or works as part of the labor gang. At times, however, there may be sufficient brick laying work to require the services of two or more additional brick

<sup>7</sup> *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733

<sup>8</sup> See *Matter of Shell Petroleum Corporation (Now Shell Oil Company, Incorporated)*, 56 N. L. R. B. 318.

masons or helpers. On such occasions, this employee is designated foreman. He is hourly paid, and has no authority to hire or discharge, or effectively to recommend such action.

The individual designated by the C. I. O. as track foreman appears on the Company's pay roll as track man. He seems to be only track man and is under the supervision of the construction foreman and the assistant master mechanic. He is employed at manual labor at an hourly rate. He may have helpers on occasion, but does not direct the work of other employees.

The individual designated by the C. I. O. as assistant pottery foreman appears on the pay roll as pottery straw boss. This employee assists the pottery foreman who has 20 to 25 men under his supervision. He sees that the foreman's orders are carried out but has no power to hire or discharge.

Unlike the gang pushers, the above-described employees are actively engaged in manual labor. The extent of their supervisory powers appears to be that of directing others. They thus occupy a relationship comparable to that existing between a mechanic and his helper. We do not consider their status to be such as to require their exclusion from the unit as supervisory employees.

*Disputed clericals:* The C. I. O. seeks the exclusion of two employees, the mechanic timekeeper and the furnace timekeeper, as clerical employees. It appears that both employees are covered by the current contract. Moreover, the record is clear that they are plant clerical and not office clerical employees. We shall include them in the unit.

We find that all production and maintenance employees of the Company, including watchmen, the head carpenter, the brick mason foreman, the track man, the pottery straw boss, the furnace timekeeper, and the mechanic timekeeper, but excluding office clerical employees, technicians, monthly paid employees, foremen, gang pushers, 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 our Direction of Election herein, subject to the limitations and additions set forth therein.

## 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 Blackwell Zinc Company, Inc., Blackwell, Oklahoma, 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 Sixteenth 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 International Union of Mine, Mill and Smelter Workers, Local No. 411, C. I. O.,<sup>9</sup> or by Smelter Workers Federal Labor Union No. 21538, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

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<sup>9</sup> We shall designate the C. I. O. on the ballot as its name appears in the Direction of Election, since we are persuaded that, if the C. I. O. is eventually certified, its designation as "International Union of Mine, Mill and Smelter Workers, C. I. O., for itself and in behalf of its Local No. 411," might be ambiguous. See *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512.