

In the Matter of PENNSYLVANIA SALT MANUFACTURING COMPANY and
LOCAL UNION No. 12055 OF DISTRICT No. 50, UNITED MINE WORKERS
OF AMERICA ¹

Case No. R-262.—Decided September 24, 1937

Chemical Industry—Investigation of Representatives: controversy concerning representation of employees: current strike caused by employer's refusal to meet and bargain collectively with petitioning union; rival organizations; substantial doubt as to majority status—*Employee Status:* during strike—*Unit Appropriate for Collective Bargaining:* production employees; occupational and wage differences; divergence of interests; employees of wholly-owned subsidiary excluded—*Election Ordered—Certification of Representatives.*

Mr. Robert H. Kleeb for the Board.

Thorp, Bostwick, Reed & Armstrong, by Mr. Roy G. Bostwick, Mr. Charles M. Thorp, Jr., and Mr. W. Davis Graham, of Pittsburgh, Pa., for the Company.

Mr. David Turets, of Pittsburgh, Pa., for the U. M. W.

Mr. B. Meredith Reid, of Pittsburgh, Pa., for the Independent.

Mr. Millard L. Midonick, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On July 27, 1937, Local Union No. 12055 of District No. 50, United Mine Workers of America, herein called the U. M. W., filed with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of Pennsylvania Salt Manufacturing Company, Natrona, Pennsylvania, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 20, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing in connection therewith. On

¹ Local Union No. 12055 of District No. 50, United Mine Workers of America, was erroneously designated in the petition as "Chemical Division No. 12055 United Mine Workers." The Board of its own motion hereby alters the erroneous designation of the petitioner in this case to its official name.

August 21, 1937, the Acting Regional Director issued a notice of hearing to be held at Pittsburgh, Pennsylvania, on August 26, 1937. On August 24, 1937, notice of postponement of hearing, to be held on September 2, 1937, was issued. The Company, the U. M. W., and Independent Union of Pennsylvania Salt Employees, herein called the Independent, which had been named in the petition as also claiming to represent employees of the Company, were served with both notices. A petition by the Independent for leave to intervene, filed with the Sixth Region on August 24, 1937, was granted by the Acting Regional Director on August 27, 1937.

Pursuant to the notice of postponement of hearing, duly served, a hearing was held in Pittsburgh, Pennsylvania, on September 2, 1937, before Frank Bloom, the Trial Examiner duly designated by the Board. At the hearing, the Board, the Company, the U. M. W., and the Independent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties. A motion by the Company to dismiss the complaint for lack of jurisdiction was denied by the Trial Examiner. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Pursuant to leave granted by the Trial Examiner, counsel for the Company has submitted a brief on the question of jurisdiction.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Pennsylvania corporation, was incorporated in 1850. Only its Natrona, Pennsylvania, plant is here under consideration, but it also owns and operates plants at Philadelphia, Pennsylvania, and at Wyandotte, Michigan. It also owns a small plant at Menominee, Michigan, which is not at present being operated.

The real estate owned by the Company and used for plant purposes at Natrona, Pennsylvania, comprises approximately 34 acres.² The machinery and equipment of the Company is housed in approximately 50 buildings. The equipment consists of mills, driers, coolers, conveyors, pumps, compressors, jigs, flotation cells, crystallizing tanks, thickeners, decomposers, digesters, sulphur burners, machine shops, carpenter shops, storerooms, Glover towers, and chemical laboratory. The Company also has an office building and owns approxi-

² In addition, the Company owns coal properties at Natrona, Pennsylvania, under lease to the Pennsalt Coal Co., a wholly-owned subsidiary.

mately 200 company houses, some of which are rented to the employees.

Natrona Light and Power Company and Natrona Water Company, both operating in Natrona, are wholly-owned subsidiaries of the Company.

The products of the Company include kryolith, sulphuric acid, muriatic acid, nitric acid, salt cake, salammoniac, aluminum sulphate or alum, sodium aluminate, hydrate of alumina, red ore, ziderite, and others.

According to a stipulation read into the record at the hearing and agreed to by all the parties, of the total products manufactured by the Company during the period from July 1, 1936 to June 30, 1937, approximately 57,051 tons were sold in and shipped to points within the State of Pennsylvania, and approximately 21,598 tons were shipped outside the State of Pennsylvania. Therefore, for that period, approximately 27.46 per cent by weight of the Company's product was shipped outside the State of Pennsylvania, and approximately 72.54 per cent was shipped to points within the State. Transportation away from the plant is accomplished exclusively by means of common carrier, principally by railroad.

The nature and sources of the raw materials used in the Company's plant are as follows:

Raw Materials:

Cryolite
Bauxite
Sulphur
Salt
Ammoniacal liquor
Caustic soda
Coal

Sources:

Greenland
France
Louisiana
Michigan
Ohio
Michigan
Pennsylvania

Cryolite and bauxite are shipped via steamship to Philadelphia, and thence by rail to Natrona. Sulphur is shipped in barge lots; the remainder of the materials are shipped by rail in carload lots. For the period from July 1, 1936 to June 30, 1937, approximately 18,657 tons, or about 46.57 per cent of the total, came from sources in Pennsylvania, while approximately 21,407 tons, or about 53.43 per cent of those materials, came from sources outside the State of Pennsylvania.

The Company has several registered trade marks for use in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

Local Union No. 12055 of District No. 50, United Mine Workers of America, is a labor organization. District No. 50 of the United

Mine Workers of America is the division for gas, by-product coke, and chemical workers. Local Union No. 12055 was chartered on July 6, 1937. It admits to membership production employees of the Company in its Natrona, Pennsylvania, plant, and it excludes foremen, supervisory, and clerical employees.

Independent Union of Pennsylvania Salt Employees is a labor organization formed on August 9, 1937. It is without outside affiliations. It admits to membership all employees in the production and operating department of the Company except foremen, department heads, or others employed in a supervisory capacity, with authority to hire or discharge.

III. THE APPROPRIATE UNIT

At the hearing, an attempt was made to reach a common accord on the scope of the unit appropriate for purposes of collective bargaining. The resulting agreement among all the parties was, in substance, as follows:

Subject to disagreements, as to two groups of workers, to be resolved by the Board, the proper bargaining unit shall consist of all employees on the pay roll for the pay roll period of July 1 to July 15, 1937, with the exception of foremen, clerical employees, watchmen, janitresses, policemen, and supervisory officials.

With respect to the two groups as to which the parties could not agree, evidence was adduced at the hearing bearing upon the propriety of including them within, or excluding them from, the appropriate unit.

One group in dispute consists of ten salaried employees. Of these, seven are chemists. These chemists exercise no supervisory functions. However, their interests are different from other production employees in many respects. They are paid on a salary basis, whereas the rest of the production employees receive wages on an hourly rate basis. The work of the chemists is of a highly skilled and technical nature,³ some being engaged in analytical pursuits and others in experimental. They spend most of their working hours in the laboratory, which is housed in a separate building. In view of these circumstances, and in spite of the fact that one is a member and officer of the Independent and one a member of the U. M. W., we find that the seven chemists referred to above should not be properly included in the unit composed of production workers. As to the remaining salaried employees in dispute, we are of the opinion that J. J. Reese, manager of the maintenance supply room and supervisor of maintenance for the company houses, and H. M. Smeltzer,

³ Cf. *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*, Case No R-127, decided June 30, 1937, 2 N L R B 772 (college trained engineers, draftsmen, and tool designers)

Jr., assistant supervisor to Reese in the maintenance supply room, should both be excluded from the appropriate unit because of their supervisory duties. However, we do not exclude A. A. Snebold, although he is on a salary basis and working shorter hours than other production employees by special dispensation of the management of the Company.⁴ His work is that of an ordinary machinist.

A second group in dispute is composed of 20 hourly rate boiler house workers whose inclusion within the collective bargaining unit is desired by the U. M. W. and apparently also by the Independent.⁵ All 20 are employed by Natrona Light and Power Company, a wholly-owned corporate subsidiary of the Company. They are supervised by Natrona Light and Power Company foremen. Although for reasons of convenience and economy their pay checks are drawn by the Company, it is reimbursed therefor by Natrona Light and Power Company. The Company and Natrona Light and Power Company keep separate books and separate pay rolls, and, unlike all the groups and individuals heretofore discussed, the boiler house workers do not appear on the Company's pay roll.

The boiler house is located on the property of the Company among its 50 buildings. The boiler department generates steam power. The entire plant of Natrona Light and Power Company is located on the property of the Company, but it does not appear from the record whether or not the boiler house and its staff constitute the sole production department of Natrona Light and Power Company. The Company obtains its requirements from the boiler department, and it pays Natrona Light and Power Company for the amounts used, but most of the steam power generated is transformed into electricity and sold by Natrona Light and Power Company to other customers.

In view of this evidence of the operation of Natrona Light and Power Company as a business entity separate from its parent, and especially in view of the sale of the major portion of its output to persons other than the Company, we find that the subsidiary is to be regarded as a separate employer from its parent. Therefore, we find that the employees of the subsidiary should not be included within the unit in the proceeding.

IV. THE QUESTION CONCERNING REPRESENTATION

On July 28, 1937, a strike was called by the U. M. W. affecting employees of the Company. Uncontradicted testimony reveals that

⁴ The Company feels that Snebold's former services as a foreman and present ill health entitle him to these preferences

⁵ Uncontradicted testimony indicates that some of the boiler workers have signed applications for membership in the Independent and authorizations for the Independent to represent them in collective bargaining with the Company.

the strike was caused by the refusal of the Company to meet with a bargaining committee appointed by the U. M. W. to discuss conditions of employment and to discuss alleged unfair labor practices which the U. M. W. contended were being used against their members in the plant. All but 14 of the employees responded when the strike was called on July 28, 1937. Several days thereafter, the Company's plant was entirely shut down, and there was testimony and a stipulation in the record to the effect that by reason of the strike the Company was not operating the production plant at the date of the hearing.

On August 9, 1937, during the continuance of the strike, the Independent was formed. Its immediate purpose was to organize a "back-to-work" movement.

Approximately 240 employees, at the most, are within the appropriate unit described in Section III above. Nevertheless, the testimony reveals that the U. M. W. claims to possess signed authorizations to represent 158 of those employees within the appropriate unit, and the Independent at the same time claims to have similar authorizations subscribed by 149 employees within the appropriate unit.

Clearly, therefore, there has arisen a pressing question concerning representation, and the duplication necessarily involved in the claims of each of the rival organizations to represent a majority of the employees constituting the appropriate unit makes necessary an election by secret ballot to resolve the question.

We further find that the workers constituting the appropriate unit were employees of the Company at the time of the strike and have continued to be such to the date of the hearing, at which time the strike was still in effect and the plant closed, because the cessation of their work was a consequence of, or in connection with, a current labor dispute.

V. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

We have discussed the strike which has continued from July 28, 1937, through the date of the hearing, and which has compelled the Company to cease the operation of its plant.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. CONDUCT OF ELECTION

It was stipulated and agreed by all the parties at the hearing that in the event that the Board should direct an election to be held, those eligible to vote shall be employees constituting the appropriate unit and appearing on the pay roll for the pay roll period of July 1 to July 15, 1937, pay day for such period being July 23, 1937.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the employees of Pennsylvania Salt Manufacturing Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All the employees of the Pennsylvania Salt Manufacturing Company, except foremen, clerical employees, watchmen, policemen, supervisory officials, and chemists constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Pennsylvania Salt Manufacturing Company, an election by secret ballot shall be conducted within ten (10) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among all the employees on the pay roll of Pennsylvania Salt Manufacturing Company for the pay roll period of July 1 to July 15, 1937, except foremen, clerical employees, watchmen, janitresses, policemen, supervisory officials, chemists, and supervisor and assistant supervisor of the maintenance supply department,⁶ to determine whether they desire to be represented by Local Union No. 12055 of District No. 50, United Mine Workers of America, or by Independent Union of Pennsylvania Salt Employees for the purposes of collective bargaining, or by neither.

⁶ For the names of the individual employees thus excluded, see Appendix A.

APPENDIX A

TABLE I

FOREMEN

Andrew Klemens	Carl Walsh
Russell Boone	J. C. Clever
T. C. Lardin	W. C. Allen
James Kosinski	V. D. Adams
C. L. Michael	E. C. Bole
A. S. Woodard	L. W. Bargerstock
R. B. Small	Charles Kuhn
J. D. Woffington	Andrew Shaw
Albert Drum	

TABLE II

CLERICAL EMPLOYEES, WATCHMEN, JANITRESSES, POLICEMEN, AND
SUPERVISORY OFFICIALS

Nettie Acre	C. G. Boone
A. M. Adams	G. E. Barr
Clara Banghardt	R. A. Barnett
Irene Boustead	C. H. Clinton
W. J. Clinton	Cyril Hayward
Mary Dick	Elsie Kirchthaler
Edward Mrovinski	Martha Leasure
A. E. Mason	M. E. Poehlmann
John Nowicki	Martha Purvis
Edward Shindledecker	V. W. Scott
John R. Seel	W. W. Woffington
James Wilks	

TABLE III

CHEMISTS

J. J. Blissel	D. L. Jack
T. J. Boone	Paul Perry
John S. Cort	H. W. Zeh
Edward J. Dean	

TABLE IV

SUPERVISOR AND ASSISTANT SUPERVISOR OF THE MAINTENANCE SUPPLY
DEPARTMENT

J. J. Reese	H. M. Smeltzer, Jr.
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[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

October 14, 1937

On July 27, 1937, Local Union No. 12055 of District No. 50, United Mine Workers of America, herein called the U. M. W., filed with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the Pennsylvania Salt Manufacturing Company, Natrona, Pennsylvania, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Pursuant to notice duly served upon the Company, the U. M. W., and Independent Union of Pennsylvania Salt Employees, herein called the Independent, which had been named in the petition as a labor organization also claiming to represent employees of the Company, a hearing was held in Pittsburgh, Pennsylvania, on September 2, 1937, before Frank Bloom, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board. On September 24, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held among all the employees on the pay roll of Pennsylvania Salt Manufacturing Company, for the pay-roll period of July 1 to July 15, 1937, except foremen, clerical employees, watchmen, janitresses, policemen, supervisory officials, chemists, and supervisor and assistant supervisor of the maintenance supply department, to determine whether they desired to be represented by the U. M. W., or by the Independent for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on September 29, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges. The agent of the Board who conducted the ballot caused to be served upon the parties to the proceeding his Intermediate Report upon the secret ballot. No objection was filed to the conduct of the ballot or the Intermediate Report thereon, and the Acting Regional Director forwarded the Intermediate Report to the Board in Washington, D. C.

As to the results of the secret ballot, the Acting Regional Director reported:

Total ballots cast.....	227
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of ballots cast for the U. M. W., affiliated with C. I. O.....	102
Total number of ballots cast for the Independent.....	124
Total number of ballots cast for neither of the above-named labor organizations.....	0
Total number of challenged ballots.....	1

Independent Union of Pennsylvania Salt Employees, having been selected by a majority of the employees of the Pennsylvania Salt Manufacturing Company, at its Natrona, Pennsylvania, plant, except foremen, clerical employees, watchmen, janitresses, policemen, supervisory officials, chemists, and supervisor and assistant supervisor of the maintenance supply department, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all such employees, and we will so certify it.

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 8 of the National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Independent Union of Pennsylvania Salt Employees has been selected by a majority of all the employees of Pennsylvania Salt Manufacturing Company, at its Natrona, Pennsylvania, plant, except foremen, clerical employees, watchmen, janitresses, policemen, supervisory officials, chemists, and supervisor and assistant supervisor of the maintenance supply department, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Independent Union of Pennsylvania Salt Employees is the exclusive representative of all of such employees of Pennsylvania Salt Manufacturing Company for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.