

In the Matter of THE AMERICAN BRASS COMPANY and THE WATERBURY BRASS WORKERS' UNION

Case No. R-392.—Decided April 21, 1938

Metal Products Manufacturing Industry—Investigation of Representatives: request for withdrawal of petition for, denied; controversy concerning representation of employees: controversy concerning appropriate unit; refusal by employer to recognize petitioning union as exclusive representative for one of five branches; rival organizations—*Unit Appropriate for Collective Bargaining:* production and maintenance employes, excluding employees of one branch, supervisory employees, clerical and office workers, watchmen, and other salaried employees, community of interest; central management of labor and personnel policies by employer; desires of employees; organization of business; similarity of wage scales, hours, and working conditions—*Representatives:* eligibility to participate in choice: employees laid off prior to election to participate in—*Election Ordered:* name of petitioning union to be omitted from ballot unless said union informs Board within 5 days that it desires its name thereon.

Mr. Charles H. Graham, for the Board.

Carmody & Thoms, by *Mr. William J. Larkin, Jr.*, of Waterbury, Conn., and *Mr. W. H. Hoover*, of New York City, for the Company.

Mr. John J. Driscoll, of Waterbury, Conn., and *Mr. Jess Gonzalez*, of Denver, Colo., for the W. B. W. U.

Mr. T. E. Conway, of Waterbury, Conn., for the Association.

Mr. Harry E. Selekmán, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 15, 1937, Waterbury Brass Workers' Union, Local No. 251, herein called the W. B. W. U., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The American Brass Company, Waterbury, Connecticut, 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 October 11, 1937, the National Labor Relations Board, herein

called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 30, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the W. B. W. U., and upon the Metal Workers Association of Waterbury, herein called the Association, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 8, 1937, at Waterbury, Connecticut, before Harold R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, and the Association were represented by counsel, the W. B. W. U., by its recording secretary. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds no prejudicial errors were committed. The rulings are hereby affirmed.

On January 5, 1938, the W. B. W. U. filed with the Regional Director a motion to withdraw its petition, alleging that a large number of employees had been laid off and that an election held at this time at the Company would not include a representative number of employees. On January 6, 1938, the Association filed with the Board at Washington, D. C., a brief objecting to the allowance of the motion, stating that the Association claimed a majority of the employees of the Company and that if the petition was withdrawn the Association would file a petition for investigation and certification on behalf of its own members. An investigation of the allegations contained in the motion of the W. B. W. U. showed that 360 of a total of 2,942 production and maintenance employees were dropped from the pay roll of the Company during the period between September 12, 1937, and January 1, 1938. The Board, on January 29, 1938, denied the motion of the W. B. W. U. to withdraw its petition. Oral argument before the Board was heard on February 4, 1938.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The American Brass Company, a Connecticut corporation with its principal office at Waterbury, Connecticut, is one of the largest

manufacturers of brass and copper products in the United States. It is a subsidiary of the Anaconda Copper Company and has six plants, three in Connecticut, one in New York, one in Michigan, and one in Wisconsin.

The plant at Waterbury, Connecticut, the one involved in this petition, is composed of five branches: the Waterbury branch, the Brass Goods branch, the Metal Hose branch, the French branch, and the general machine shop. The Waterbury branch, which is divided into the North and South plants, consists of a casting shop, two rolling mills, a wire mill, two tube mills, a maintenance and service department, and a shipping department. The two plants, approximately a half mile apart, cast, roll, and fabricate brass and copper ingots, rods, wires, and sheets. Some of the products of the Waterbury branch are sold directly to consumers; the rest are sent to the other branches for fabrication before final distribution to purchasers. The Company employs 2,092 workers at the Waterbury branch, of whom 1,863 are production and maintenance employees.

The Brass Goods branch is adjacent to and located in the same yard as the North plant of the Waterbury branch. The same gates, roads, and transportation facilities are shared by the employees of the various shops in the yard. This branch fabricates articles from the rods and sheets produced in the Waterbury branch. The Company employs 665 workers at the Brass Goods branch, of whom 559 are production and maintenance employees.

The Metal Hose branch is contiguous to and located on the same premises as the South plant of the Waterbury branch. Here also the same gates and roads are used by the employees of the two branches. The Metal Hose branch fabricates brass and copper products from materials manufactured in the Waterbury branch. The Company has 199 workers at the Metal Hose branch, of whom 148 are production and maintenance employees.

The French branch is a half mile from the North plant and fabricates small tubing from the tubes received from the Waterbury branch. The Company employs 362 employees at the French Branch, of whom 317 are production and maintenance workers.

The general machine shop division is across the street from the North plant of the Waterbury branch. Men from the machine shop are assigned to construct and repair machinery in all the branches. The Company employs 68 workers at the general machine shop, of whom 55 are production workers.

The raw materials used in the five branches are copper, zinc, lead, tin, aluminum, barillium, and nickel. It was stipulated that more than 51 per cent of the raw materials used for processing and fabrication are purchased outside the State of Connecticut and that more than 51 per cent of the finished products are shipped outside Connecticut.

II. THE ORGANIZATIONS INVOLVED

Waterbury Brass Workers' Union, Local No. 251, is a labor organization, chartered by the International Union of Metal, Mine, and Smelter Workers, affiliated with the Committee for Industrial Organization, admitting to its membership production and maintenance employees of all five branches of the Company, excluding supervisory employees, watchmen, office and clerical workers, and other salaried employees.

Metal Workers Association of Waterbury is an unaffiliated labor organization. It admits to its membership production and maintenance employees of the five branches of the Company, excluding supervisory and clerical employees.

III. THE QUESTION CONCERNING REPRESENTATION

The W. B. W. U. began to organize the employees of the Company in August 1936, and received its charter on September 12, 1936. On several occasions the officials of the W. B. W. U. requested that the Company agree to an election to be held in the North plant rolling mill of the Waterbury branch, but each time the Company refused to consent to such an election. In May 1937, the Association was formed and in August asked that it be recognized as the exclusive bargaining agent for employees of all five branches of the Company. Although the Company states that it is willing to bargain with both organizations for their respective members, it has refused to grant exclusive recognition to either union.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE APPROPRIATE UNIT

The W. B. W. U. in its petition as amended at the hearing contends that the appropriate unit should consist of the production and maintenance employees of the Waterbury branch, excluding supervisory employees, clerical and office workers, watchmen, and other salaried employees. In support of its contention the W. B. W. U. states that the basic production work, consisting largely of heavy manual labor, is performed in the Waterbury branch, whereas the other branches, which fabricate brass and copper products, use machinery more extensively to turn out smaller and finer articles. The W. B. W. U. also states that the International Union of Mine, Mill, and Smelter Workers has bargained separately for various branches of the Chase Brass & Copper Company and of the Scoville Manufacturing Company.

The Association contends that the appropriate unit should consist of the production and maintenance employees of the Company, excluding the employees of the French branch, supervisory employees, clerical and office workers, watchmen, and other salaried employees. The Association seeks to exclude the employees of the French branch for the reason that the employees in this branch have refused to join either the W. B. W. U. or the Association although both organizations have attempted to obtain as members employees of this branch.

The Company claims that the employees in the French branch should not be deprived of the right to participate in the election and that because of its unified management policy collective bargaining would be facilitated if the production and maintenance employees of the five branches are included in the appropriate unit.

The evidence shows that there is a continuous process of production and fabrication in the various branches. The raw materials and scrap are delivered by the metal storage and scrap department of the Waterbury branch to the casting shop, which melts the ingredients and disposes of it in the form of slabs and bars to the sheet metal department. This department processes the slabs and bars into finished sheets, coils, strips and plates; the bolts produced here are sent to the wire mill department, where they are fabricated into finished rods and wires; the billets and coiled sheets are sent to the tube departments, where they are manufactured into forms of seamless tubing. All the above operations take place in the Waterbury branch. The tubing and sheet metal also go to the Metal Hose branch for fabricating into metal hose. The French branch receives some of the tubing, and the Brass Goods branch receives the sheet metal produced in the Waterbury branch.

The Company stated that its policy with reference to management, working conditions, and wage rates was to treat the entire plant as a single unit. The maintenance and service department is centralized in the Waterbury branch and serves all but the French branch, although the service is available to it. The central boilerhouse at the North plant serves the Brass Goods branch, the North plant of the Waterbury branch, and the general machine shop. The boilerhouse at the South plant provides steam for the South plant of the Waterbury branch and the Metal Hose branch. One central freight loading platform, which is located in the yard of the North plant, is used by all the branches. The watchmen service takes care of all branches except the French branch. The recreation building is for the use of all the employees of the Company. The employment office for the hiring of all employees is located at the South plant, and all hiring is done through the employment department under a single supervisor. The Company maintains a uniform wage schedule for employees in all the branches, and any change in the classification is applied simul-

taneously in all the branches. There is likewise a uniformity in hours of work and other working conditions throughout the plant.

It is clear from the foregoing that all five branches are geographically close to one another; that there is a uniformity in the wage scale, hours of work, and the other conditions of employment; and that there exists a large amount of interrelationship and interdependence among the five branches. These considerations indicate the appropriateness of a unit composed of employees at all five branches rather than a unit composed of employees of the Waterbury branch, as claimed by the W. B. W. U., or a unit composed of employees of four branches, as desired by the Association. There are, however, a number of additional considerations relative to the employees in the French branch. The evidence shows that this branch was separately owned and operated until 1928 at which time it was purchased by the Company. The French branch is about a half mile from the North plant of the Waterbury branch, and maintains its own watchmen and maintenance and service departments. Both the W. B. W. U. and the Association have attempted to obtain members among the employees of the French branch but such efforts have been unsuccessful. Accordingly, both labor organizations desire a bargaining unit which excludes such employees. Under the circumstances, we conclude that the employees of the French branch should not be included in the bargaining unit with the employees of the other branches.¹ It is not necessary to decide at this time whether the employees of this branch could function as a separate bargaining unit or as a part of the bargaining unit herein found appropriate if at some time in the future the employees of the French branch indicate that they desire to be so represented. We conclude that the unit proposed by the Association and on the basis of which it seeks an election is appropriate for the purposes of collective bargaining.

We find that the production and maintenance employees of the Company, excluding the employees of the French branch, supervisory employees, clerical and office workers, watchmen, and other salaried employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The Company introduced in evidence a pay roll for the week ending September 18, 1937, which showed a total of approximately 2,625 employees of the Company within the unit which we have found to

¹ See *Matter of United Shipyards, Inc. and Locals No. 12, No. 13, No. 15 of the Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 742.

be appropriate. No evidence of membership was submitted by the W. B. W. U. at the hearing, but subsequently it filed with the Board a membership list of 232 names. The Association testified that it had approximately 1,300 employees as members, and subsequent to the hearing it likewise submitted a membership list with about 1,050 names. A comparison of the list submitted by the Association with the pay roll of September 18, 1937, shows that the names of approximately 900 employees within the unit appear both on the list and on the pay roll. We find under these circumstances that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot. In the motion to withdraw its petition the W. B. W. U. alleged that a considerable number of employees had been laid off subsequent to the filing of the petition. We are of the opinion that employees laid off as distinguished from those who have quit or been discharged for cause or eligible to vote. We shall, therefore, direct an election among the production and maintenance employees of the Company employed by the Company during the pay-roll period ending September 18, 1937, including those laid off since that time, but excluding the employees of the French branch, supervisory employees, clerical and office workers, watchmen, other salaried employees, and those employees who have since quit or been discharged for cause.

Since the evidence introduced by the W. B. W. U. shows that out of a total of approximately 2,625 production and maintenance employees within the appropriate unit, it has only 232 members, most of whom are found in the Waterbury branch of the Company, and that it claimed to represent a majority of the production and maintenance employees only in the Waterbury branch, it is not clear whether the W. B. W. U. desires its name on the ballot in an election to be conducted on the basis of the unit which we have found to be appropriate. We shall, therefore, omit its name from the ballot. However, if within five days after the issuance of the Direction of Election, the W. B. W. U. informs the Board that it wants its name on the ballot, the Direction of Election will be amended to allow the employees within the appropriate unit to determine whether they desire to be represented by Waterbury Brass Workers' Union, Local No. 251, or by Metal Workers' Association of Waterbury, for the purpose of collective bargaining, or by neither.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of The American Brass Company, Waterbury,

Connecticut, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the Company, excluding employees of the French branch, supervisory employees, clerical and office workers, watchmen, and other salaried employees, 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 (b) 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 The American Brass Company, Waterbury, Connecticut, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second 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 the production and maintenance employees of the Company, who were employed by the Company during the pay-roll period ending on September 18, 1937, including those who have since been laid off, but excluding the employees of the French branch, supervisory employees, clerical and office workers, watchmen, other salaried employees, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Metal Workers Association of Waterbury, for the purposes of collective bargaining.