

In the Matter of THE INTERNATIONAL NICKEL COMPANY, INC. and
SQUARE DEAL LODGE No. 40, AMALGAMATED ASSOCIATION OF IRON,
STEEL AND TIN WORKERS OF NORTH AMERICA, THROUGH STEEL
WORKERS ORGANIZING COMMITTEE

Case No. R-640.—Decided May 6, 1938

Metal Products Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations heretofore bargaining for members only: expiration of contracts resulting therefrom—*Unit Appropriate for Collective Bargaining:* employees engaged in production, maintenance, service, and transportation, who are paid on an hourly, piece, or tonnage basis, excluding certain categories; history of collective bargaining relations with employer; eligibility for membership in both rival organizations; dissimilarity of interest; previous finding of appropriate unit modified by specific exclusion of inspectors, mill clerks, and clerical employees—*Representatives:* eligibility to participate in choice: employees laid off permanently prior to filing of petition not to participate in—*Election Ordered*

Mr. W. J. Perricelli, for the Board.

Mr. Henry S. Wingate, of New York City, and *Sullivan & Cromwell*, by *Mr. David W. Peck*, of New York City, for the Company.

Mr. Julius Holzberg, of Cincinnati, Ohio, for the Union.

Mr. W. H. Daniel, of Huntington, W. Va., for the Association.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 14, 1938, Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, herein called the Union, through Steel Workers Organizing Committee, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees in the Huntington, West Virginia, plant of The International Nickel Company, Inc., herein called the Company, and requesting an investigation and cer-

tification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 16, 1938, 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 March 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Union, and upon Nickel Alloy Employees Association, Inc., 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 March 24, 1938, at Huntington, West Virginia, before E. R. Stempel, the Trial Examiner duly designated by the Board. The Board, the Company, the Union, and the Association were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On May 2, the Company filed a brief and on the following day, together with the Union, presented oral argument before the Board. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the brief filed by the Company.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The International Nickel Company, Inc., is a Delaware corporation having its principal office in New York City and owning and operating a rolling mill at Huntington, West Virginia, and a foundry and research laboratory at Bayonne, New Jersey.

The Company is a wholly owned subsidiary of International Nickel Company of Canada, Limited, which produces approximately 80 per cent of the world's supply of nickel. International Nickel Company of Canada, Limited, by itself and through its subsidiaries, carries on extensive mining operations in Canada and Wales and extensive manufacturing operations in the United States, Canada, Wales, England, and Scotland. Its products are marketed throughout the world.

This proceeding is concerned with the Huntington plant of the Company which manufactures rolled nickel, reduced nickel, monel

metal, inconel, copper nickel and other nickel bearing alloys in the form of rods, bars, strips, sheets, tubes, wires, welding rods, forgings, reduced nickel, and anodes. The principal raw materials used in the Huntington plant consist of matte and nickel which are secured under an intercompany contract between the Company and International Nickel Company of Canada, Limited, whereby the latter purchases all of the Company's requirements of such materials. Under this contract in excess of 22,630,000 pounds of matte and nickel were shipped to the Huntington plant from Canada during 1937.

Manufactured products of this plant are sold either directly to manufacturers or to jobbers for resale to manufacturers. During 1937 the Huntington plant sold in excess of 23,250,000 pounds of such products, 90 per cent of which were shipped outside West Virginia.

At the time of the hearing, the plant employed 993 production and maintenance workers, including mill clerks and inspectors.¹

II. THE ORGANIZATIONS INVOLVED

Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America is a labor organization affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization. It admits to membership all employees of the Huntington plant of the Company, exclusive of supervisory employees.

Nickel Alloy Employees Association, Inc., is an unaffiliated labor organization admitting to membership all employees of the Huntington plant of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In April 1937, the Company entered into a collective bargaining contract with the Union, and at the same time signed a similar contract with the Employees' Council of the Employees' Representation Plan, at that time a labor organization of employees of the Huntington plant. Each contract covered only the members of the particular labor organization and was to remain in effect until April 1938. During the year 1937 the Employees' Representation Plan was disestablished and was succeeded by the Association, which the record indicates also succeeded to the rights of the former under its contract with the Company. Both the Union and the Association now claim to represent a majority of the employees in an appropriate unit at the Huntington plant and each proposes to negotiate with the Company at the expiration of the 1937 contract.

¹ For a more detailed description of the operations of the Company see *Matter of International Nickel Company, Inc. and Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America*, 1 N. L. R. B. 907, pp. 908-911.

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

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

All parties stipulated that an appropriate unit for the purposes of collective bargaining should include all employees in the Huntington plant engaged in production, maintenance, service, and transportation, who are paid on an hourly, piece, or tonnage basis, except policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries, and the clerks in the main office.² The Association contends that this unit should also include inspectors, mill clerks, and approximately 60 other salaried employees described by Charles Plinston, president of the Association, as "all clerks, stenographers, and fellows that work in the combustion department and the engineering department, such as draftsmen and clerks in the other offices, such as the purchasing department and the order department." The Union opposes this contention and urges that these classes of employees be excluded from the unit.

Inspectors: These employees inspect and check the processed products in order to detect defects and flaws. In connection with their duties inspectors are charged with determining the causes of unsatisfactory work and may recommend discharges for inefficiency. It would therefore appear that their duties are more closely associated with the duties of foremen than with those of the production employees.

In support of its position, the Association urges that inspectors are eligible to membership in both unions, were included within the appropriate unit determined by the Board on June 11, 1936, and were covered by both collective bargaining contracts signed by the Company in April 1937. Although the Union admits that inspectors are eligible to membership and that some of them are members of the Union, it contends that no concerted drive has ever been under-

² The Board found this unit to be appropriate in its Decision and Direction of Election of June 11, 1936, involving the same plant (See 1 N. L. R. B. 907). No election was ever held, however, pursuant to that Direction which is superseded by the Direction of Election to be ordered herein.

taken to organize these employees. The record further shows that subsequent to the Board's decision cited above, inspectors, who had been paid on an hourly wage basis, were placed upon a salary basis. Answering the Association's reference to the April 1937 contracts, the Union points out that inspectors were covered by supplemental contracts rather than by all the provisions of the principal contracts.

From all the evidence, we are of the opinion that these employees should be excluded from the appropriate unit. The requirements of their duties unquestionably associate their interests and problems with those of the foremen. Although the method of wage payment should not be decisive in considering the status of such employees, it would appear from their transfer to the pay roll of salaried employees, that the Company itself considers their duties as bringing them within the same general classification as the supervisory staff.

It is true that the eligibility requirements for membership in a labor organization have some bearing in the determination of an appropriate unit. The negotiations of both the Union and the Association's predecessor, however, indicate that collective bargaining for these employees can best be carried on separate and apart from such bargaining for other employees. The April 1937 contracts specifically except inspectors from the provisions with respect to wages, hours of work, vacations, and seniority, the fundamental elements involved in negotiations between any labor organization and an employer, and compelling factors in determining the appropriateness of a unit for the purposes of collective bargaining. We shall therefore exclude inspectors from the unit found to be appropriate herein.

Mill Clerks: The duties of these employees, who are paid on a salary rather than on an hourly wage basis and who work in the various departments of the plant, consist of keeping time and production records, writing stockroom orders, and figuring production along with the superintendent. Their duties are wholly clerical and thus distinguishable from the duties of production and maintenance employees. As in the case of inspectors, they are eligible for membership in either of the unions and are covered by the April 1937 contracts. With inspectors, moreover, they are specifically excluded by supplemental agreements from the provisions of the principal contracts with respect to wages, hours of work, vacations, and seniority. For the same reasons considered above under the discussion of inspectors, we shall exclude mill clerks from the unit we shall find appropriate for the purposes of collective bargaining.

Other Salaried Employees: As indicated above, this classification of employees is described by the Association as "all clerks, stenographers, and fellows that work in the combustion department and the engineering department, such as draftsmen and clerks in the other

offices, such as the purchasing department and the order department." Whether this classification is intended to include all clerical employees is not disclosed in the record; it would appear, however, that it represents only a miscellany of clerical workers, vaguely defined and fitting into no homogeneous class of employees. Neither the Union nor the Company could recognize or identify the employees so classified by the Association, and we shall accordingly exclude them from the appropriate unit.

In some decisions we have held that employees whose duties are similar to those of inspectors and mill clerks should properly be included in the same bargaining unit with production and maintenance employees. In general however we have followed the practice of excluding such employees from the appropriate unit when one of the unions desires such exclusion. We therefore find that all employees in the Huntington plant of the Company engaged in production, maintenance, service, and transportation, who are paid on an hourly, piece, or tonnage basis, except inspectors, mill clerks, policemen, time-keepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries, and other clerical 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.

VI. THE DETERMINATION OF REPRESENTATIVES

Neither the Union nor the Association produced any proof at the hearing to show how many of the Company's employees it represented, although both claimed to represent a majority. We accordingly find that an election by secret ballot is necessary to resolve the question concerning representation.

The Union urges that the pay-roll date of December 1, 1936, be used to determine eligibility for participation in the election, thus making eligible to vote some 294 employees who have been laid off since that date, including approximately 200 who were laid off in November and December 1937. The Union contends that these employees were temporarily laid off owing to a drop in production and may reasonably expect to return to work when the Company resumes its normal operations.

The record clearly establishes, however, that the 200 employees laid off in November and December 1937 were permanently laid off, that their names were removed from the pay roll, and that the possibility of their reemployment in the future is extremely remote. The works auditor of the Company, citing production statistics of the past 9

years, testified to the technological improvements made in the plant during the past year and similar improvements that will be made in May of this year which have had and will have the effect of reducing the number of production employees on the pay roll. On the basis of his calculations, which were not effectively challenged, it would appear that the Union's position is untenable. We shall set the eligibility date as of March 14, 1938, the day the petition herein was filed.

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 Company at its Huntington, West Virginia, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All employees of the Company at its Huntington, West Virginia, plant, engaged in production, maintenance, service, and transportation, who are paid on an hourly, piece, or tonnage basis, except inspectors, mill clerks, policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries, and other clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the 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, 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 a part of the investigation ordered by the Board to ascertain representatives for collective bargaining with The International Nickel Company, Inc., at its Huntington, West Virginia, plant, 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 Ninth 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, among the employees of The International Nickel Company, Inc., at its Huntington, West Virginia, plant who were employed by it during the pay-roll period immediately preceding March 14, 1938, engaged in production, maintenance, service, and transportation, who

are paid on an hourly, piece, or tonnage basis, except inspectors, mill clerks, policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries, other clerical employees, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Steel Workers Organizing Committee, or by Nickel Alloy Employees Association, Inc., for the purposes of collective bargaining, or by neither.