

IN the Matter of INTERNATIONAL NICKEL COMPANY, INC. and
SQUARE DEAL LODGE NO. 40, AMALGAMATED ASSOCIATION OF IRON,
STEEL AND TIN WORKERS OF NORTH AMERICA

Case No. R-30.—Decided June 11, 1936

Miscellaneous Metal Products Industry—Employee Representation Plan: form and operation—*Unit Appropriate for Collective Bargaining:* employees on hourly, tonnage and piece work basis; plant; production and maintenance employees—*Election Ordered:* question affecting commerce: confusion and unrest among employees—controversy concerning representation of employees: majority status disputed by employer; request by substantial number in appropriate unit; rival organizations.

Mr. Harry L. Lodish for the Board.

Mr. Arthur E. Reyman, of Washington, D. C., for Lodge No. 40.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 22, 1935, Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, hereinafter referred to as Lodge No. 40, filed a petition with the Regional Director for the Ninth Region, 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., New York, New York, hereinafter referred to as the Company, and requesting the National Labor Relations Board to conduct an investigation and certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On February 14, 1936, the National Labor Relations 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, authorized the Regional Director for the Ninth Region to conduct an investigation and hearing. On February 20, 1936, the Regional Director issued a notice of a hearing to be held at Huntington, West Virginia, on March 12, 1936. Pursuant to the notice, a hearing was begun on March 12, 1936 at Huntington, West Virginia before Walter Wilbur, duly designated by the Board as Trial Examiner. The hearing was adjourned before any testimony was taken when it was discovered that the Employees' Council, an organization of employees of the Company, had not been notified and was not represented at the hearing. Pursuant to an amended

notice of hearing, copies of which were duly served upon the Company, Lodge No. 40 and the Employees' Council, the hearing was continued at Huntington, West Virginia on April 10, 1936 before Robert M. Gates, duly designated by the Board as Trial Examiner. The Company, Lodge No. 40 and the Employees' Council were represented by counsel and participated in the hearing.

At the hearing on March 12, 1936, counsel for the Company objected to the proceedings and took exception thereto on the grounds that the Act is unconstitutional generally and also as applied to the employees of the Huntington plant of the Company. No rulings on these objections were made by the Trial Examiner. The Board hereby overrules the objections.

At the hearing on April 10, 1936, counsel for the Employees' Council renewed a motion to dismiss which had been served on the National Labor Relations Board and upon other parties to the proceeding prior to the hearing. The Trial Examiner overruled the motion to dismiss in so far as it denied the constitutionality of the Act, which ruling is hereby affirmed, and reserved decision in so far as it denied the applicability of the Act to the employees of the Huntington plant of the Company. No ruling was made at the close of hearing on this motion. The motion is hereby denied.

Much testimony and several exhibits were received in evidence over the objections of counsel for the Company and for the Employees' Council. The Board has reviewed these rulings of the Trial Examiner as well as his ruling in refusing to quash the petition on the ground that the affidavit accompanying it was not legally sufficient and finds that no errors were committed.

Upon the entire record now before it, including the pleadings, transcript of the evidence and exhibits introduced, the National Labor Relations Board makes the following:

FINDINGS OF FACT

1. The International Nickel Company, Inc., is a corporation existing under and by virtue of the laws of the State of Delaware, having its principal office in New York, New York, and owning and operating a rolling mill at Huntington, West Virginia, and a foundry and research laboratory at Bayonne, New Jersey. The Huntington plant has a teletype connection with the New York office of the Company.

Products manufactured at the Huntington plant consist of rolled nickel, reduced nickel, monel metal, inconel, copper-nickel and other nickel bearing alloys. The products are produced in the form of rods, bars, strip, sheets, tubes, wires, welding rods, forgings, reduced nickel and anodes.

The Company is a wholly owned subsidiary of the International Nickel Company of Canada, Limited, which produces approximately 80 per cent of the nickel produced in the world. The International Nickel Company of Canada, Limited, by itself and through its subsidiaries, carries on extensive mining operations in Canada and Wales; extensive manufacturing operations in the United States, Canada, Wales, England and Scotland; and markets its products throughout the world. The International Nickel Company of Canada, Limited, also has the sole right for a long period of years to prospect for, mine and treat nickel-bearing ore which may be found in a defined territory in Finland.

The Company has a registered trade-mark which is printed on a tag attached to goods shipped from the Huntington plant and states in its application for registration "that said trade-mark is used by said Company in commerce among the several States of the United States and between the United States and foreign nations or Indian tribes; . . ." It advertises its products in the Saturday Evening Post, Time, and various trade and technical magazines having national circulation.

Approximately 1,137 persons who are engaged in production are employed at the Huntington plant.

2. The principal raw materials used in the Huntington plant are matte and nickel which are purchased under an inter-company contract between the Company and the International Nickel Company of Canada, Limited, whereby the latter purchases all of the Company's requirements of such material. All orders are placed by the New York office of the Company and shipments are made from Canada to the Huntington plant. In 1935, 22,630,000 pounds of matte and nickel were ordered for the Huntington plant.

In addition to matte and nickel the following materials, at a cost of and from the places indicated, were used in the Huntington plant in the year 1935:

Material	Secured from—	Approximate cost
Alloying agents.....	New York.....	\$50,000
Magnesium.....	Michigan.....	8,000
	Ohio.....	
	Pennsylvania.....	
Soda ash.....	Virginia.....	9,000
	Michigan.....	
	New York.....	
Heavy acids.....	Ohio.....	10,000
	Kentucky.....	
	Georgia.....	
Charcoal.....	Louisiana.....	45,000
	Florida.....	
Nitrate of Soda.....	Virginia.....	5,000
Natural Gas.....	West Virginia.....	300,000
Fluorspar.....	Illinois.....	3,500

Miscellaneous maintenance supplies are the only materials which are purchased by the management of the Huntington plant directly, all other materials being purchased by the New York office of the Company.

All raw materials are received at Huntington by rail, the plant having a siding served by the Chesapeake & Ohio Railroad. An average of four men are employed constantly to unload these raw materials.

3. The products manufactured by the Company are sold either direct to manufacturers or to jobbers for resale to manufacturers. In either case the goods manufactured at the Huntington plant are required to be subjected to further manufacture before products for public consumption are produced. All sales are made by the New York office of the Company which issues shipping instructions to the Huntington plant. Shipments are made directly from the Huntington plant to the purchaser.

Outgoing shipments are carried by the Chesapeake & Ohio Railroad, by independent carriers by truck, and by means of Company trucks which carry products to steamship and other railroad termini within the State of West Virginia.

In 1935, 23,250,000 pounds of finished products were shipped from the Huntington plant, 90 per cent going outside the State of West Virginia. Of this 90 per cent, 10 per cent went to foreign countries, the balance into 38 States of the United States.

Whitehead Metal Products Company of New York, Inc., which is an affiliate of both the Company and of the International Nickel Company of Canada, Limited,¹ purchases products of the Company. Whitehead Metal Products Company of New York, Inc., maintains several sales offices and warehouses throughout the Eastern States and operates five retail stores. The testimony of the Vice-President of the Company was that these retail stores do not sell products in the form produced at the Huntington plant but rather products manufactured by Whitehead Metal Products Company of New York, Inc., and by other manufacturers which are manufactured in part from products produced at the Huntington plant. The inference is logical that the sales offices resell products as manufactured by the Company and that the Whitehead Metal Products Company of New York, Inc., is in effect a sales agent of the Company.

¹The application for registration under the Securities Exchange Act of 1934 filed May 16, 1935 by the International Nickel Company of Canada, Limited, states that the registrant owns 90 per cent of the voting power in Whitehead Metal Products Company of New York, Inc. Dr. John F. Thompson, Executive Vice-President of the Company, sets forth in a statement introduced at the hearing that International Nickel Company, Inc., owns 100 per cent of the preferred stock and 60 per cent of the common stock of Whitehead Metal Products Company of New York, Inc.

The Company also consigns stock to jobbers located in the following cities: Atlanta, Georgia; Chicago, Illinois; Cincinnati and Cleveland, Ohio; Denver, Colorado; Detroit, Michigan; Houston, Texas; Los Angeles and San Francisco, California; Milwaukee, Wisconsin; Minneapolis, Minnesota; Pittsburgh, Pennsylvania; St. Louis, Missouri; and Seattle, Washington.

Tube billets are sent from the Huntington plant to an independent contractor at Beaver Falls, Pennsylvania, where the billets are pierced and then returned to the Huntington plant for further processing. Sales of such finished products constitute approximately two per cent of the total shipments of finished products of the Huntington plant.

Small amounts of the products produced at the Huntington plant are sent to the warehouses at the Bayonne, New Jersey plant of the Company for storage.

4. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States and with foreign nations.

5. The Employees' Council is a body elected by the employees of the Company in accordance with an Employees' Representation Plan which was put into effect in the Huntington plant in 1933. Under this plan all employees of the Company except executives, foremen and others having power to hire or discharge, or holding purely supervisory positions, are eligible to vote for representatives who form the Employees' Council. To be eligible to serve as a representative, a person must be an American citizen 21 years of age or over and have been in the employment of the Company for at least one year of continuous service. The plant is divided into 12 departments and one representative is elected in each department for every 75 employees or fraction thereof. The purposes of the plan are stated to be to promote cooperation and more effective communication and contact between the Company and its employees, to give employees a voice in regard to the conditions under which they work and to facilitate organized expression of employees' views. The plan has been in effect and actively operating since its adoption. Representatives elected in each year have met with the management of the Company and have presented individual grievances and wage disputes to the management. Some adjustments have been made through these requests. Although formerly the plan contemplated an equal number of representatives selected by the management to form the Council and contained other features of Company domination and control, in July, 1935, the plan was so amended as to eliminate these provisions.

Lodge No. 40 did not allege, nor attempt to prove, that the Employees' Council is not entitled to a place on the ballot in the event that an election is directed.

6. Lodge No. 40 is a labor organization which is a local of Amalgamated Iron, Steel and Tin Workers of North America, affiliated with the American Federation of Labor. It was organized in October, 1933, its membership being limited to employees in the Huntington plant of the Company. The Financial Secretary of Lodge No. 40 testified that approximately 625 employees of the Company were members of Lodge No. 40 at the time of the hearing. This number, if accurate, constitutes a majority of the employees of the Company at the Huntington plant.

7. Lodge No. 40 has made many attempts to secure recognition from the Company as the collective bargaining agent of the Company's employees. Having been unsuccessful in securing such recognition, Lodge No. 40 filed a petition with the old National Labor Relations Board on October 17, 1934, requesting an election to determine the desire of a majority of the employees. A hearing was held and in a decision rendered April 11, 1935 the Board ordered an election by secret ballot. The election was never held because the Supreme Court's decision holding the National Industrial Recovery Act unconstitutional was rendered prior to a decision by the Circuit Court of Appeals to which the Company had appealed the order for the election.

On July 15, 1935, Lodge No. 40 notified A. S. Shoffstall, General Manager of the Company, that a committee of Lodge No. 40 desired to meet with the management to establish certain relations with them as guaranteed by the Act. Shoffstall replied that he would meet the committee on July 20, 1935. At this meeting the committee stated that since the membership of Lodge No. 40 constituted a majority of the employees, Lodge No. 40 was entitled to recognition as the exclusive bargaining agency, and that the committee wished to enter into an agreement with the Company for the purpose of improving working conditions. On August 5, 1935, Shoffstall replied to the request by asking the committee to submit a memorandum outlining the conditions which the committee felt to be unsatisfactory. On August 7, 1935, the committee replied, asking Shoffstall to answer directly the question of whether he would meet and bargain collectively with the committee of Lodge No. 40 and also asking for permission to use the Company's bulletin boards for posting of notices and like purposes. On August 21, 1935, Shoffstall replied to this letter by questioning the good faith of the committee because of its failure to list specific conditions it wished to consider, and further stating: ". . . we are prepared, as we wrote you, to meet your committee in an effort to consider and adjust possible differences or grievances affecting employees for whom you may be acting. However, until such time as you may have specific matters

to present regarding work relations, we feel that further meetings or correspondence with you will not prove mutually helpful. We again call to your attention the fact that there is a duly elected Employees' Council in this Plant and that matters of mutual interest to the management and the employees are being considered and settled in an orderly way through the medium of this Council." The right to use the bulletin boards was refused on the basis that no need for such use existed in an organization which contemplated the attendance of members at Lodge meetings.

On September 11, 1935, the committee wrote Shoffstall requesting a meeting to present specific matters concerning working conditions. At the meeting held September 30, 1935, pursuant to this request, the committee presented a list of specific grievances and suggested changes in conditions of employment. On November 13, 1935, Shoffstall replied, treating each suggestion in detail and giving reasons why the Company felt no one of them could be accepted.

8. A question concerning the representation of the employees in the Huntington plant of the Company has arisen in that Local No. 40 insists that it is the exclusive representative of the employees, while the Company has taken the position that the Employees' Council is also entitled to represent the employees. Whether a majority of the employees wish to be represented by Lodge No. 40 or by the Employees' Representation Plan can best be determined by the holding of an election by secret ballot.

9. The question concerning representation which has arisen in the Huntington plant of the Company has created discontent, unrest and bitterness, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

10. At the hearing John A. Rowe, corresponding representative of Lodge No. 40, testified that Lodge No. 40 had passed a resolution to request that the appropriate unit be determined to be "all production, maintenance, service and transportation employees on an hourly, piece or tonnage basis in and about said plant, except policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries and the clerks in the main office."

The Company does not deny this to be a proper unit. We find that the 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 policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries and the clerks in the main office, constitute a unit appropriate for the purposes of collective bargaining.

11. At the hearing, Lodge No. 40 requested that the payroll which should be taken to determine the eligibility of employees to vote in

the election should be the payroll as of the date of the first hearing. The Company made no objection to this date.

CONCLUSIONS OF LAW

1. The 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 policemen, timekeepers, hospital employees, officials and others in a supervisory position, stenographers, secretaries and the clerks in the main office, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of employees in the Huntington plant of the Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) 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 and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED, as part of the investigation authorized by the Board, that an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction of Election under the direction and supervision of Ralph A. Lind, Regional Director for the Ninth Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the employees in the Huntington plant of the Company on the payroll of the Company as of March 12, 1936, 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, the clerks in the main office, and those employees who have resigned or have been discharged for good cause between March 12, 1936 and the date of election, to determine whether or not they desire to be represented by Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America or by the Employees' Representation Plan.