

In the Matter of UNITED STATES SMELTING, REFINING AND MINING COMPANY and MIDVALE CLERICAL AND TECHNICAL WORKERS UNION, No. 658

Case No. 20-R-902.—Decided October 25, 1943

Mr. F. S. Mulock, of Salt Lake City, Utah, for the Company.

Mr. Clarence L. Palmer, of Midvale, Utah, for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Midvale Clerical and Technical Workers Union, No. 658, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of United States Smelting, Refining and Mining Company, Midvale, Utah, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Salt Lake City, Utah, on September 16, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

United States Smelting, Refining and Mining Company is a Maine corporation with its principal office in Boston, Massachusetts. At various points in the United States and Alaska it is engaged in the business of mining, milling, and refining non-ferrous metals. This proceeding is concerned solely with the Company's milling and smelt-

ing operation at Midvale, Utah. The major portion of the ores processed at Midvale are secured from mines owned by the Company and located in the State of Utah. At the Midvale plant the Company treats by flotation process lead and zinc ores to form lead and zinc concentrates. Zinc concentrates are shipped to Montana for further processing. Lead concentrates are further processed at Midvale and then shipped outside the State of Utah for refining. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Midvale Clerical and Technical Workers Union, No. 658, affiliated with the International Union of Mine, Mill & Smelter Workers, CIO, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 parties are agreed that the appropriate unit should consist of all clerical and technical employees at the Company's Midvale, Utah, plant, including trainees, but excluding the chief clerk, chief chemist, assistant chief chemist, warehouse superintendent, safety and employment manager, and the safety and employment clerk. The Union would include in, and the Company would exclude from, this unit, the head timekeeper, chief weighmaster, metallurgical clerk, mill clerk, scale inspector, and the plant engineer.

The head timekeeper works with two assistants in the main office under the supervision of the chief clerk. He directs the work of his assistants who do the routine operations connected with calculating

¹ The Field Examiner reported that the Union submitted 36 assignment of wages cards, all of which bore apparently genuine original signatures; that the names of 35 persons appearing on the cards were listed on the Company's pay roll of August 2, 1943, which contained the names of 38 employees in the appropriate unit; that the cards were dated in May and June of 1943.

the employees' pay and issuing checks. The head timekeeper signs the checks and fills in the amounts. He prepares certain forms for Government agencies and other departments. His assistants work a morning and an afternoon shift, respectively; he works a day shift overlapping both of the assistants' shifts.

The chief weighmaster works with two assistants and a laborer in the scale house, about a mile and a half from the plant. He works the day shift which overlaps the night shift by half an hour. Most of the activity of the scale house is carried on during the day. The chief weighmaster compiles reports based on his own and the assistants' activities. On his days off, one of the assistants works the day shift and compiles the reports:

The Company states that the recommendations of the head timekeeper and of the chief weighmaster are given weight in matters of hiring, discharging, and disciplining, but, it admits that the turnover is so small and discipline so unnecessary that the authority is seldom exercised. The Company would exclude the two employees above discussed on the grounds that they are supervisory employees. The character of their work is not supervisory; they do the same type of work as do their assistants. Their authority to recommend changes in the status of employees is too ephemeral to warrant considering them as supervisory employees. We shall include the head timekeeper and the chief weighmaster in the unit.

The metallurgical clerk, working in the main office, and the mill clerk, working in the flotation mill office, assemble data that enable the Company to know from day to day its exact production, profit, or loss. The reports are a compilation of reports made by other clerks and are freely consulted by any of the other clerks who may wish to examine them. The Company would exclude these employees as confidential. Even if the reports compiled by these employees can be considered confidential despite free access of other employees to them, we do not consider the metallurgical clerk and the mill clerk confidential employees within the meaning of the designation as used in our decisions, because the type of information to which they have access has no bearing on labor relations.² The Company further contends that the metallurgical clerk is supervisory because he is in charge of the office whenever the chief clerk is absent. As the absences of the chief clerk are extremely rare, we do not believe that this duty warrants the conclusion that the metallurgical clerk is a supervisor. We shall include the metallurgical clerk and the mill clerk in the unit.

The scale inspector is in charge of inspecting and repairing all scales. He does 50 percent of the work by himself and the other 50 percent

² See *Matter of Firestone Tire and Rubber Company of California*, 50 N. L. R. B. 679; Cf. *Matter of Chrysler Corporation (Marysville Plant)*, 36 N. L. R. B. 157.

with the help of various employees temporarily assigned to him for a particular job. He directs them in their work but they are subject to the authority of their respective foremen. The Company contends that he is a supervisor. We find that the relationship of the scale mechanic to the men assigned to him is more that of the mechanic to his helper than that of supervisor to worker. Accordingly, we shall include the scale mechanic in the unit.

The plant engineer is considered a départment head. He attends all conferences of management officials at which Company policy including labor relations policy is formulated. We find that the plant engineer is a part of management and shall exclude him from the unit.

We find that all clerical and technical employees of the Company at its Midvale, Utah, plant, including the head timekeeper, chief weighmaster, metallurgical clerk, mill clerk, the scale inspector, and trainees, but excluding the chief clerk, chief chemist, assistant chief chemist, warehouse superintendent, safety and employment manager, safety and employment clerk, the plant engineer, 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 the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with United States Smelting, Refining and Mining Company, Midvale, Utah, 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 Twentieth 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 or not they desire to be represented by Midvale Clerical and Technical Workers Union, No. 658, affiliated with the International Union of Mine, Mill & Smelter Workers, C. I. O., for the purposes of collective bargaining.