

In the Matter of R. S. McCLINTOCK COMPANY *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, C. I. O., FOR ITSELF, ITS DISTRICT UNION #2, AND ON BEHALF OF ITS LOCAL #517

Case No. 20-R-929.—Decided December 17, 1943

Mr. Sam Stephenson, Jr., of Salt Lake City, Utah, and *Mr. Arnold L. Graves*, of Spokane, Wash., for the Company.

Mr. J. Frank Marble, of Salt Lake City, Utah, and *Mr. Albert C. Jensen*, of Murray, Utah, for the Union.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Mine, Mill and Smelter Workers, C. I. O., for itself, its District Union #2, and on behalf of its Local #517, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of R. S. McClintock Company, Spokane, Washington; herein called the Company, at the properties of National Tunnel and Mines Company, Bingham Canyon, Utah, the National Labor Relations Board provided for an appropriate hearing upon due notice before Merle D. Vincent, Trial Examiner. Said hearing was held at Salt Lake City, Utah, on November 2, 1943. The Company and the Union appeared, participated, 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

R. S. McClintock Company is a Washington corporation with its principal office and place of business at Spokane, Washington. The

Company is engaged in diamond drilling, under contracts with various mining companies and Government agencies. At the present time it has contracts in and is operating in several western States, including California, Nevada, and Utah.

In the year 1942, the Company's income from its various operations was in excess of \$300,000. During the same period it purchased drilling equipment valued in excess of \$10,000, said equipment being purchased from firms in Minneapolis, Minnesota, and Spokane, Washington, and shipped to its operations in various States. This proceeding concerns only the Company's operations at the mines of the National Tunnel and Mines Company, herein called National, at Bingham Canyon, Utah. National is a subsidiary of Anaconda Copper Company and all its ores are treated by another subsidiary of Anaconda and then shipped to refineries in New Jersey and New York, after which the copper is then sold and credited to the National account.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill and Smelter Workers, District #2, Local #517, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about June 19, 1943, the Union wrote to the Company requesting recognition as the exclusive bargaining representative of the Company's employees at its National Tunnel and Mines Company operations. The Company refused to grant such recognition to the Union on the grounds that the unit is inappropriate and that it doubts the majority status of the Union.

A statement of a Field Examiner for the Board, 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.

¹ The Field Examiner reported that the Union submitted a list of 10 names of persons listed on the Company's pay roll of September 30, 1943, in the appropriate unit. Said list showed dues deductions by the Company from wages of each person listed, and pursuant to provisions of a State statute making such action by the Company compulsory when authorized in writing by the persons involved.

IV. THE APPROPRIATE UNIT

The Union contends that all drillers and their helpers in the employ of the Company who work at the National Tunnel and Mines Company's operations at Bingham Canyon, Utah, constitute an appropriate unit. The Company contends that the only appropriate bargaining unit is a company-wide unit, including the employees of the Company at all its operations.

The Company's operations are all carried on pursuant to contracts with other companies and are limited in time by the amount of work called for by the contracts. Most of the work is exploratory and experimental in nature, and is for relatively short periods of time. The Company contracts for and keeps going at the same time as many operations as it can, and employees are shifted from one operation to another as their services become available. When a particular job is completed, if there is no work available, the employees are laid off. The operations here involved, however, are markedly different from the Company's other operations. The mine in which these employees are working is an old excavation which has not been worked for a number of years. National Tunnel and Mines Company had contemplated spending from 2 to 3 years in preparing the mine for economic operation, but the urgent need for copper prompted National to seek a more rapid method of developing the mine. The use of diamond drilling greatly accelerates the speed with which exploratory operations can be carried on and new veins of ore located. National therefore contracted for the services of the Company. The holes which are drilled for exploratory purposes are used subsequently as blast holes, thus eliminating the need for further drilling for that purpose by the miners in the employ of National. The use of diamond drilling increases the cost of the mining operations to such an extent that National agreed to use this method only when assured of a subsidy from the Government to cover the additional expense. The subsidy payments will, of course, cease when the demand for copper decreases. It appears, therefore, that the Company's work at this mine is not only of an exploratory character, but is also an integral part of the National's mining operations and will probably continue for the duration of the war.

The substantial interchange of personnel between the Company's various operations, the temporary character of most of its operations, and the fact that the Company's labor relations are controlled and handled from the home office, indicate that the company-wide unit urged by the Company would be appropriate. However, the record also indicates that the Company's operations are many miles apart; that the employees at only one other operation of the Company have

been organized; that no labor organization is attempting or has attempted to organize the Company's employees on a company-wide basis; and that there is no indication that company-wide organization is likely in the foreseeable future. To dismiss the petition here involved would deprive the employees at the Company's National Tunnel operations of the opportunity to bargain collectively for an indefinite period. We find that a unit confined to the Company's National Tunnel and Mines operations is presently appropriate for the purposes of collective bargaining. Our finding, in this regard, does not preclude a later finding that a larger, more inclusive unit is appropriate.

The Company supervises its activities at National Tunnel through a general foreman and a foreman. Both of these employees have authority to hire and discharge and are in complete charge of the work at that location. They will be excluded from the unit.

We find that all drillers and their helpers employed by the Company at the Bingham Canyon, Utah, operations of the National Tunnel and Mines Company, excluding the general foreman and foreman, and any 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 pay-roll 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with R. S. McClintock Company, Spokane, Washington, 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 election, to determine whether or not they desire to be represented by International Union of Mine, Mill and Smelter Workers on behalf of its Local Union No. 517, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.