

In the Matter of PHELPS DODGE CORPORATION, COPPER QUEEN BRANCH, MINES DIVISION and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, FOR ITSELF AND ON BEHALF OF ITS LOCAL UNION No. 551

Case No. 21-R-2173.—Decided February 12, 1944

Mr. F. J. Ryley, of Phoenix, Ariz., *Mr. C. R. Kuzell*, of Clarkdale, Ariz., and *Mr. H. C. Henrie*, of Bisbee, Ariz., for the Company.

Mr. Orville Larson, of Miami, Ariz., *Mr. Charles Maddern*, of Bisbee, Ariz., and *Mr. Houston Splawn*, of Douglas, Ariz., for the CIO.

Mr. Paul M. Peterson, of Bisbee, Ariz., for the AFL.

Messrs. Nicholas Fontecchio and *A. B. Sparks*, both of Bisbee, Ariz., for the UMW.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union of Mine, Mill & Smelter Workers, for Itself And On Behalf Of Its Local Union No. 551, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Bisbee, Arizona, on December 4, 1943. The Company, the CIO, Bisbee Miners' Union, Local No. 22792, affiliated with the American Federation of Labor, herein called the AFL, and United Mines Workers of America, herein called the UMW, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. During the hearing, the AFL moved to dismiss the petition, which motion was reserved by the Trial Examiner

for ruling by the Board. For the reasons hereinafter appearing, said motion is denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Phelps Dodge Corporation is a New York corporation, engaged in the mining, refining, and sale of copper. It owns numerous subsidiary mining, copper refining, public utility, mercantile, railroad, and other companies in Mexico and in the States of New York, New Jersey, Indiana, California, New Mexico, Texas, and Arizona. The only operation of the Company here involved is the Company's mining operations located at Bisbee, Arizona, and designated as the Copper Queen Branch, Mines Division, where the Company is engaged in the mining of copper and other metal-bearing ores. During the 12-month period ending December 1, 1943, the Company produced at its Copper Queen Branch, Mines Division, in excess of 1 million tons of ore, all of which was shipped to the smelters of the Company at Douglas and Clarkdale, Arizona, and from these smelters was shipped to points outside the State of Arizona. The Company employs in excess of 1,800 employees at its Copper Queen Branch, Mines Division.

The Company admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill & Smelter Workers, and its Local Union 551, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

Bisbee Miners Union, Local No. 22792, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Mine Workers of America is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about October 14, 1943, the CIO advised the Company that it had been designated by a majority of the Company's employees in an appropriate unit and requested recognition as the exclusive bargaining representative thereof. The following day the Company, through its attorney, advised the CIO that the Company would not grant recognition to the petitioner.

The Company and the AFL contend that certain contracts to which they are parties bar the instant proceeding. The AFL's motion to dismiss is predicated upon this contention. The first of these contracts, by its terms, became effective as of November 11, 1942, and was to continue in full force and effect for a period of 1 year and thereafter for additional 1-year periods, unless either party notified the other, in writing, at least 30 days prior to the expiration date, of intention to modify or terminate the agreement, in which event said contract was to remain in effect until modified by mutual agreement. On September 30, 1943, more than 30 days before the expiration date of the aforesaid contract, the AFL notified the Company by letter of its desire to modify the agreement and, pursuant thereto, negotiations were begun on October 14, 1943. Since the AFL opened the contract for renegotiations, the automatic renewal provision became inoperative. Under such circumstances the contract of November 11, 1942, is clearly not a bar to a present determination of representatives.¹ On October 23, 1943, a new contract was executed by the AFL and the Company. Since this contract was entered into by the Company with full knowledge of the claim of the CIO, it also is no bar to the present determination of representatives.

A statement of a Field Examiner for the Board, and a supplemental statement by the Trial Examiner, introduced into evidence at the hearing indicate that the CIO and the AFL each represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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

In 1942 the Board found appropriate, upon petitions filed by eight craft unions, by the AFL Local herein involved, and by the CIO, eight craft units and a residual production and maintenance unit.³ The AFL won the election in the production and maintenance unit and was duly certified. With the exceptions hereinafter noted, it is this production and maintenance unit which the CIO presently seeks to repre-

¹ *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802

² The Field Examiner reported that the CIO submitted 523 application for membership cards bearing the apparently genuine signatures of persons whose names appeared on the Company's pay roll of October 23, 1943, which pay roll contained the names of 1,389 persons in the appropriate unit.

At the hearing the CIO submitted to the Trial Examiner an additional 111 application for membership cards bearing the apparently genuine signatures of persons whose names appeared on the same pay roll

The AFL relies upon its contract to establish its interests in the proceeding.

The UMW submitted to the Trial Examiner at the hearing, 48 membership cards bearing the apparently genuine signatures of persons whose names appear on the Company's aforesaid pay roll within the appropriate unit

³ 41 N. L. R. B. 140 and 42 N. L. R. B. 288.

sent. The AFL and the Company agree that the unit should be described as follows:

All remaining employees of the underground, mechanical and surface departments who are not included in the eight craft units for which the Board previously certified exclusive bargaining representatives, including all gang and jigger bosses, the shaft boss, the shaft repair boss, the precipitation plant jigger boss and attendant, the general office janitor, diamond drillers and diamond drill helpers, but excluding the sample mill boss, drilling instructors, finlay machine instructors, deputized watchmen, the salaried gardener in the hospital,⁴ first-aid instructor, all salaried foremen and bosses, hotel employees, medical-department employees, salaried engineering and technical employees, salaried accounting-department employees, and the diamond drill foreman, employed by the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona.

The CIO is in agreement with the Company and the AFL except insofar as it seeks to include in the unit non-deputized watchmen. All watchmen, whether deputized or not, were excluded from the appropriate unit in the earlier proceeding, and the CIO contends that this situation should not be changed. The UMW contends that the appropriate unit should include the employees in all of the units previously found appropriate by the Board. This would eliminate the craft units.

The UMW offered no evidence in support of its contention for an all-inclusive unit. It appears that the various previously certified AFL unions and the AFL Local here involved, annually have entered into a single contract with the Company covering all of the employees included in the several appropriate units. The UMW contends that this fact alone establishes an industrial bargaining history. We cannot agree. The provisions in the contracts and the testimony at the hearing indicate that although the craft unions negotiated jointly when contracts were executed, these contracts carefully preserved the respective interests of the various craft groups and the Company has considered its bargaining relations to be multi-craft in character.

The Company and the AFL seek to include in the appropriate unit the non-deputized watchmen. All watchmen were excluded from the unit by the earlier decision of the Board and the Company now contends that this disposition has proved to be impracticable, since non-deputized watchmen are considered by the Company to be in the same category as change-room attendants, a group of employees which was included in the bargaining unit which the Board previously

⁴ Designated by the parties as A. V. Zamora.

found appropriate. It appears that non-deputized watchmen are frequently interchanged with, and are closely related to, the change-room attendants. Both groups receive the same wages; both are generally composed of superannuated former production employees; both are under the supervision of the chief watchman; and both are sworn in as members of the auxiliary military police, as is the case with the deputized watchmen. Both groups wear bands indicating their military status and perform functions which are quite similar, namely, acting as monitors, either at the gates or in the change-room. In accordance with our usual policy respecting members of the auxiliary military police, we shall exclude from the unit both non-deputized watchmen and change-room attendants, as well as the deputized watchmen. We shall also exclude from the unit all supervisory employees who fall within our customary definition as set forth below.⁵

In conformance with our previous Decision, the above findings of fact, and our established policy respecting supervisory employees, we find that all remaining employees of the underground, mechanical, and surface departments of the Company at its Copper Queen Branch, Mines Division, Bisbee, Arizona, who are not included in the eight craft units for which the Board previously certified exclusive bargaining representatives, including the precipitation plant attendant, the general office janitor, diamond drillers and diamond drill helpers, but excluding the sample mill boss, drilling instructors, finlay machine instructors, all watchmen and change-room attendants, the salaried gardener on the hospital grounds, the first aid instructor, all salaried foremen and bosses, hotel employees, medical-department employees, salaried engineering and technical employees, salaried accounting department employees, and the diamond drill foreman, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to 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 therein.

⁵ Accordingly we shall not make any determination with respect to the inclusion or exclusion of those categories of employees included within the unit in our prior Decision, who have the title of "boss."

The CIO has requested that it be designated on the ballot under the name of the international union, "for itself and on behalf of its Local Union 551." While we have previously granted similar requests, it appears upon further consideration that a certification in such terms might be ambiguous. The request is accordingly denied and we shall designate the CIO on the ballot as International Union of Mine, Mill & Smelter Workers, Local 551, affiliated with the CIO. The AFL has requested that it be designated on the ballot as Bisbee Miners' Union No. 22792, A. F. of L. This request is granted.

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 Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, 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 Twenty-first 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 they desire to be represented by International Union of Mine, Mill & Smelter Workers, Local Union No. 551, affiliated with the CIO, by Bisbee Miners' Union No. 22792, A. F. of L. or by United Mine Workers of America, for the purposes of collective bargaining, or by none of said unions.