

In the Matter of AMERICAN SMELTING & REFINING COMPANY and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, C. I. O.

Case No. 4-R-1299.—Decided February 16, 1944

Mr. R. Worth Vaughan, of New York City, and *Mr. K. Harms*, of Perth Amboy, N. J., for the Company.

Mr. David Mandel, of Perth Amboy, N. J., for the Union.

Mr. Wallace E. Royster, 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 & Smelter Workers, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Smelting & Refining Company, Perth Amboy, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at New Brunswick, New Jersey, on December 28, 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 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

American Smelting & Refining Company is a New Jersey corporation engaged in the mining, smelting, and refining of non-ferrous metals, in particular, lead, copper, and zinc. It operates about 30 smelting and refining plants and about 18 mines in the United States,

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Mexico, and South America. We are here concerned with certain employees of the Company working at the Perth Amboy, New Jersey, plant. The gross annual business of the Company at this plant is in excess of \$40,000,000 and substantially all the metals refined there go directly or indirectly into the war effort. The Company concedes, and we find, that its operations affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill & Smelter Workers is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated at the hearing that in November 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of the militarized guards at the Perth Amboy plant and that the Company refused to accord recognition unless and until the Union is certified as such bargaining representative by the Board.

A statement of the Regional Director 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 Union seeks to represent the militarized plant-protection guards at the Perth Amboy plant in a separate bargaining unit. Production and maintenance employees of the Company at this plant are already represented by Local No. 365 of the Union and, while the Company agrees that plant-protection guards may constitute an appropriate bargaining unit, it contends that they should not be represented by the same union or by a local of the same international union. It is argued that such representation may serve to dilute the loyalty of plant-protection employees or at least to make their duties more difficult and distasteful.

The Company employs 18 non-supervisory plant protection guards who are armed, uniformed, and under the direction of the military

¹ The Regional Director stated that the Union submitted 16 authorization cards, all bearing apparently genuine original signatures and dates subsequent to October 1, 1943. All cards bore the names of persons whose names appear on the Company's pay roll for December 2, 1943. There are 18 employees in the appropriate unit.

authorities. Guards are responsible for the protection of the plant from sabotage, espionage, or trespass. At the entrance to the plant, guards see that time cards are properly punched by arriving or departing employees, and prevent the entrance of unauthorized persons. Within the plant, guards report violations of company rules relating to loitering, union activity on company time, or "hiding out." The Company adverts to the fact that its operations result in the recovery of large amounts of gold and silver and that the presence of these precious metals is a constant temptation to thieves. Thus, in this respect, special vigilance is required of the guards. The Company expressed the fear at the hearing that guards, if represented in collective bargaining by the same union which represents the production and maintenance employees would be reluctant to report violations of rules indulged in by fellow union members and as a result, their vigilance and probity might be relaxed in other respects.

We do not agree that union membership, even in the same union with production and maintenance employees is inconsistent with faithful and efficient service. Further, we have consistently held that militarized plant-protection guards are employees within the meaning of the Act and entitled to the benefits secured them thereunder.² Hence, it is their privilege to designate as their representative for the purposes of collective bargaining any labor organization they deem suitable. Any limitation upon this freedom of choice is essentially in derogation of their right to bargain collectively at all. Accordingly, we find that all militarized plant-protection guards of the Company at the Perth Amboy plant, excluding captains, lieutenants, 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 means of 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

² See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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 American Smelting & Refining Company, Perth Amboy, New Jersey, 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 Fourth 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 any 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 International Union of Mine, Mill & Smelter Workers, C. I. O., for the purposes of collective bargaining.