

In the Matter of BASIC MAGNESIUM, INCORPORATED *and* INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, FOR ITSELF AND ON BEHALF OF ITS LOCAL UNION No. 641, C. I. O.

Case No. 20-R-884.—Decided March 10, 1944

Thatcher & Woodburn, by *Mr. William J. Forman*, of Reno, Nev., and *Mr. C. J. Parkinson*, of Las Vegas, Nev., for the Company.

Mr. Willard Y. Morris, of Denver, Colo., and *Messrs. C. L. Pegues* and *A. E. Anz* of Gabbs, Nev., for the Smelter Workers.

Mr. Morley Griswold, of Reno, Nev., for all AFL unions except the Machinists.

Mr. E. R. White, of San Bernardino, Calif., for the Machinists.

Mr. Wallace E. Royster, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a joint petition duly filed by International Union of Mine, Mill & Smelter Workers, for itself and on behalf of its Local Union No. 641, C. I. O., herein called, collectively, the Smelter Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Basic Magnesium, Incorporated, Gabbs and Luning, Nevada, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earl S. Bellman, Trial Examiner. Said hearing was held at Reno, Nevada, on September 29, 30, and October 1, 1943. During the hearing, the Trial Examiner permitted to intervene American Federation of Labor, International Union of Hodcarriers, Building and Common Laborers Union, herein called the Laborers, International Union of Operating Engineers, herein called the Engineers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, herein called the Teamsters, United Brotherhood of Carpenters and Joiners of America, Local 632, herein called the Carpenters, International Brotherhood of Electrical Workers, Local 401, herein called the I. B. E. W., International Brotherhood of Painters,

Decorators, and Paperhangers, Local 567, herein called the Painters, and United Association of Journeymen Plumbers and Steamfitters, Local 350, herein called the Plumbers. The above-listed intervenors were represented at the hearing by the same counsel and will be herein called collectively the A. F. of L. unions. The Trial Examiner also permitted the intervention of International Association of Machinists, herein called the Machinists.¹ All parties 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 A. F. of L. unions moved to dismiss the petition on the grounds that it is insufficient on its face to confer jurisdiction on the Board and that an amendment to the current Appropriation Act precludes the Board from holding hearings or making findings of fact in this proceeding. For reasons appearing in Section III, *infra*, the motion is denied. 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

Basic Magnesium, Incorporated, is a Nevada corporation with its principal place of business at Las Vegas, Nevada. We are here concerned with the employees working in the operations at Gabbs, Nevada, where the Company is engaged in mining and reducing magnesite ore and at Luning, Nevada, where it operates loading docks. The properties at both locations are owned by Defense Plant Corporation, an instrumentality of the United States Government. The magnesite concentrates produced at Gabbs are shipped from Luning through Nevada and Utah to Las Vegas, Nevada, for further processing. The Company concedes, and we find, that its operations affect 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 No. 641, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

American Federation of Labor is a federation of labor organizations and, through its affiliates, admits to membership employees of the Company.

¹ At the time of the hearing, the Machinists were in the process of disaffiliation from the A. F. of L. and its interests were represented separately.

International Association of Machinists,² International Union of Hodcarriers, Building and Common Laborers Union, International Union of Operating Engineers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, United Brotherhood of Carpenters and Joiners of America, Local 632, International Brotherhood of Electrical Workers, Local 401, International Brotherhood of Painters, Decorators and Paperhangers, Local 567, and United Association of Journeymen Plumbers and Steamfitters, Local 350, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

As of January 15, 1942, the Company entered into a collective bargaining contract with the Laborers, the Engineers, and the Teamsters, covering all production and maintenance employees then employed at the Gabbs and Luning locations and providing for future recognition of all A. F. of L. unions whose members might be employed by the Company. By its terms the contract is to remain in effect for the duration of the war, or for 2 years, whichever is the longer period. The Company and the A. F. of L. unions assert that the contract constitutes a bar to this proceeding inasmuch as the longer alternative term has not expired. It is the settled policy of the Board not to give effect to a collective bargaining contract for longer than a reasonable period where it may serve to frustrate the right of employees to choose representatives under the Act.³ We find that the contract has been in effect for a reasonable period and that it does not constitute a bar to a present investigation of representatives. The A. F. of L. unions also assert that under the Amendment to the current Appropriation Act⁴ the Board is without jurisdiction in this proceeding inasmuch as the contract above referred to is a contract between management and labor in existence for more than 3 months. Since the limitation referred to has no application to representation cases, but expressly refers to "complaint" cases the contention is without merit.⁵

By letter dated May 17, 1943, the Smelter Workers advised the Company that it represented a majority of the Company's production and maintenance employees and requested recognition as exclusive bargaining representative. On May 24, 1943, the Company replied that the request would be referred to the General Manager at Las Vegas.

² Since the hearing, the Machinists has reaffiliated with the American Federation of Labor

³ See *Matter of The Trailer Company of America*, 51 N L R B 1106.

⁴ Labor-Federal Security Appropriation Act, 1944, 57 Stat 494

⁵ The further objection of the A. F. of L. unions to the alleged insufficiency of the petition herein is without merit. The petition is of concern only to the Board and is sufficient if, as here, it informs with substantial accuracy of the existence of a question concerning representation.

No further communication was received from the Company but at the hearing it refused to extend such recognition to the Smelter Workers.

A statement of the Field Examiner introduced into evidence at the hearing and other evidence in the record indicates that the Smelter Workers and the A. F. of L. unions represent a substantial number of employees in the unit each claims to be appropriate.⁶

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 UNITS; THE DETERMINATION OF REPRESENTATIVES

The Smelter Workers seeks a bargaining unit which may be described briefly as including all production and maintenance employees at the Gabbs and Luning locations but excluding office and clerical employees, professional employees, technical employees, janitors, storekeepers, timekeepers, firemen, guards, and supervisory employees. All parties agree to the exclusion of the employee categories listed above. The Company, while alleging that it has dealt separately with the intervening A. F. of L. unions in matters concerning the groups they claim to represent, has adopted a neutral position concerning the propriety of an industrial unit as opposed to craft units. Each of the A. F. of L. unions seeks a separate bargaining unit for the employees within its jurisdiction.

The operations of the Company are closely integrated, from removal of magnesite ore from the ore beds, through reduction and flotation processes at the mill, to shipment of the resulting concentrates from the loading dock at Luning. This integration lends weight to the contention of the Smelter Workers for an industrial unit. Industrial units are not unique in the mining industry and the employees in the Company's smelter at Las Vegas, Nevada, are now represented

⁶ The Field Examiner stated that he had examined evidence of membership among the Company's employees submitted by the Smelter Workers, the Machinists, the Carpenters, the I B E W, the Plumbers, and the Painters. He found the indicated membership of these unions to be as shown on the chart following

Labor organization	Number for whom evidence was submitted	Number on Company's pay roll of August 1, 1943	Total number of employees in units sought
Smelter Workers.....	212	133	395
Machinists.....	36	26	32
Carpenters.....	25	25	26
I B E W.....	19	18	18
Plumbers.....	9	8	17
Painters.....	2	2	2

The Laborers, Teamsters, and Engineers submitted no evidence of membership but rely upon the contract to establish their interest

in such a unit.⁷ However, the A. F. of L. unions have long represented and bargained for such employee categories as they would have constitute separate craft units and they may, too, point to other operations in the mining industry where employees are represented in craft units.⁸

The Smelter Workers allege that the contract presently in force between the Company and the A. F. of L. unions contemplates bargaining on an industrial basis. Bargaining with the Company was initiated by the Laborers, Teamsters, and Engineers and resulted in the negotiation of the contract here involved, The contract recognizes

The Local and International Unions, Federations thereof, and Building and Construction Trades Council signatory hereto, and the Local Unions affiliated with the American Federation of Labor not signatory hereto but the members of which may from time to time be called upon to render services to the Company, as the sole and exclusive collective bargaining representatives of all persons rendering service to the Company under the terms of this Agreement . . .

and further provides that when employee classifications other than those within the craft jurisdiction of the Laborers, Teamsters, and Engineers are established, wage scales and working conditions for such classifications shall be negotiated with the craft unions involved. Provision is made for the handling of grievances by the "Union representative" of the employee concerned. The contract is signed by officials identified as representatives of the Laborers, Teamsters, and Engineers. It contains no other provisions or recitals which indicate whether the parties intended, on the one hand, to set up a single industrial unit of the Company's production and maintenance employees, to be represented by a group of A. F. of L. unions acting jointly, or, on the other hand, several craft units to be represented severally by the participating unions.

The contract and grievance procedure above described may not be inconsistent with industrial bargaining but again, it does not negate the unit contentions of the A. F. of L. unions. We are of the opinion that the history of bargaining presents an unclear picture in respect to the question of the appropriate unit. In this situation, with regard to the conflicting contentions of the parties and the inconclusive bargaining history, we shall permit the scope of the bargaining unit or units to be determined in part by the desires of the employees themselves to be ascertained by means of separate elections.

As indicated in Section III, *supra*, each of the A. F. of L. unions, excepting the Laborers, Teamsters, and Engineers who rely upon the

⁷ *Matter of Basic Magnesium, Incorporated*, 48 N. L. R. B. 1310.

⁸ See *Matter of Kennecott Copper Corporation, Nevada Mines Division*, 51 N. L. R. B. 1140

contract, produced evidence indicating that it has organized a substantial number of employees in its proposed bargaining unit. The Smelter Workers apparently represents a sufficient number of employees to entitle it to a place on the ballots in the elections which we shall direct. We believe that the employees in the units proposed by the A. F. of L. unions may appropriately constitute separate bargaining units, or be merged in the industrial unit requested by the Smelter Workers. We shall consider, then, the composition of the voting groups.

The Machinists would include in a separate unit all machinists, heavy duty mechanics, maintenance repairmen, maintenance repairman helpers, blacksmiths, blacksmith helpers,⁹ and welders. Although the Engineers claim jurisdiction over heavy duty mechanics and welders who work on equipment used by the Engineers, it appears that the employees in these disputed categories are not assigned exclusively to work on such equipment. Since their skills are similar to those employees whom the Machinists would include, we shall include all heavy duty mechanics and welders in a voting group of machinists.

The Painters would include in a separate unit only those employees working as painters.

The Carpenters would include in a separate unit all carpenters and bulkhead men. The latter build bulkheads in freight cars before the concentrate is loaded for shipment. Since bulkhead men use carpenters' tools in their work, we shall include them in the carpenters' voting group.

The I. B. E. W. would include communications equipment operators (telephone switchboard operators) along with skilled electricians in the unit it seeks. The communications equipment operators are not skilled in the electrical craft and also are engaged part time in clerical work. We shall exclude them from the electricians' voting group.

The Plumbers seeks a unit of plumbers, steam fitters, pipe fitters, and pipe fitter helpers. This is a traditional craft grouping and we shall include the named categories of employees in the plumbers' voting group.

The Teamsters seeks a unit of truck drivers, warehousemen, and service station attendants, excluding truck drivers engaged in the transport of concentrates from the mill to the loading dock. The categories included constitute a functional group with complementary skills and are concededly within the jurisdiction of the Teamsters. We shall include them in the teamsters' voting group. The truck drivers transporting concentrates from the mill to the loading dock

⁹ The Machinists has represented blacksmiths and helpers for several years locally by agreement with International Brotherhood of Blacksmiths, Drop Forgers, and Helpers.

are employees of an independent contractor and we shall, therefore, exclude them from the teamsters' voting group.

The Operating Engineers would include in the unit it seeks all employees who operate power driven machinery, specifically ball mill operators, burnermen, furnacemen, churn drill operators, compressor operators, core drill operators, core drill operator helpers, crusher operators, crusher apprentices, diamond drill operators, diamond and churn drill apprentices, drier operators, filter operators, flotation operators, flotation helpers, loading dock operators, mill apprentices, oilers, pump operators, roaster operators, screen operators, shovel operators, shovel apprentices, stacker operators, tractor operators, and welders and heavy duty mechanics who work on equipment used by the engineers. Many of the employees sought here' to be included are production employees of varying grades of skill. With the exception perhaps of the oiler, whose inclusion is not contested, and the welders and heavy duty mechanics claimed by the Machinists, all the employees here in question operate power driven machinery, and may appropriately constitute a bargaining unit. As we have indicated, the welders and heavy duty mechanics are more appropriately included in the machinists' unit. Certainly they lack the characteristic of operating power driven machinery. We shall exclude the welders and heavy duty mechanics from the engineers' voting group.

The unit sought by the Laborers would include chuck tenders, pump men, general laborers (production), high scalers, jack hammer men, timber men, leyner operators, loading dock operator helpers, mill laborers, mine laborers, quarrymen, nippers, samplers, pitmen, powdermen, powderman helpers, tailing pond operators, wagon drillers, wagon driller helpers, hodcarriers and maintenance laborers. Although none of the A. F. of L. unions has claimed jurisdiction over weighmasters, who weigh concentrates in the mill, they perform work closely connected with the production process, are under the supervision of the production foremen, and receive wages comparable to those of other production employees. We shall, therefore, include weighmasters in the laborers' voting group.

As the parties agree, we shall exclude office and clerical employees, professional employees, technical employees, janitors, storekeepers, timekeepers, firemen, and guards from the voting groups described below. The A. F. of L. unions would include in the units they seek all foremen who do not have final authority to hire and discharge and who work with the tools of their trade. It appears, however, that all foremen possess authority effectively to recommend changes in the status of employees and we shall, therefore, exclude foremen from the voting groups together with 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.

Upon the basis of the entire record and in conformance to the foregoing conclusions, we shall order the conduct of elections among the employees of the Company at its Gabbs and Luning operations within each of the groups listed below, excluding from each group, office and clerical employees, professional employees, technical employees, janitors, storekeepers, timekeepers, firemen, guards, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action:

Group (1) All employees performing the work of machinists, heavy duty mechanics, maintenance repairmen, maintenance repairman helpers, blacksmiths, blacksmith helpers, and welders, excluding all foremen, to determine whether they desire to be represented by the Smelter Workers or by the Machinists for the purposes of collective bargaining, or by neither;

Group (2) All employees performing the work of painters, excluding foremen, to determine whether they desire to be represented by the Smelter Workers or by the Painters for the purposes of collective bargaining, or by neither;

Group (3) All employees performing the work of carpenters and bulkhead men, excluding foremen, to determine whether they desire to be represented by the Smelter Workers or by the Carpenters for the purposes of collective bargaining, or by neither;

Group (4) All employees performing the work of electricians, electrician helpers, and panel operators, excluding foremen and communications equipment operators, to determine whether they desire to be represented by the Smelter Workers or by the I. B. E. W. for the purposes of collective bargaining, or by neither;

Group (5) All employees performing the work of plumbers, steam fitters, pipe fitters, and pipe fitter helpers to determine whether they desire to be represented by the Smelter Workers or by the Plumbers for the purposes of collective bargaining, or by neither;

Group (6) All employees performing the work of flat rack truck drivers, heavy duty truck drivers, pick-up truck drivers, water wagon drivers, warehousemen, and service station attendants, excluding truck drivers engaged in the transport of concentrates from the mill to the loading dock who are employees of an independent contractor, to determine whether they desire to be represented by the Smelter Workers or by the Teamsters for the purposes of collective bargaining, or by neither;

Group (7) All employees who operate power driven machinery, specifically ball mill operators, burnermen, furnacemen, churn drill

operators, compressor operators, core drill operators, core drill operator helpers, crusher operators, crusher apprentices, diamond drill operators, diamond and churn drill apprentices, drier operators, filter operators, flotation operators, flotation helpers, loading dock operators, mill apprentices, oilers, pump operators, roaster operators, screen operators, shovel operators, shovel apprentices, stacker operators, and tractor operators, to determine whether they desire to be represented by the Smelter Workers or by the Engineers for the purposes of collective bargaining, or by neither;

Group (8) All employees performing the work of chuck tenders, pump men, general laborers (production), high scalers, jack hammer men, timber men, leyner operators, loading dock operator helpers, mill laborers, mine laborers, quarrymen, nippers, samplers, pitmen, powdermen, powderman helpers, tailing pond operators, wagon drillers, wagon driller helpers, hodcarriers, weighmasters, and maintenance laborers, to determine whether they desire to be represented by the Smelter Workers or by the Laborers for the purposes of collective bargaining, or by neither.

We will make no final determination of the appropriate unit or units pending the results of the elections.

Those eligible to vote in the elections which we shall direct shall be the employees of the Company described in the voting groups above who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth therein.¹⁰

DIRECTION OF ELECTIONS

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 Basic Magnesium, Incorporated, Gabbs and Luning, Nevada, elections 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 voting groups below who were employed during the pay-roll period immediately preceding the date of this

¹⁰ The American Federation of Labor does not desire to participate in elections in the above groups and consequently will not appear on the ballots. The several unions have requested that they appear on the ballots as in the Direction.

Direction, including employees who did not work during said payroll 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, and excluding further office and clerical employees, professional employees, technical employees, janitors, storekeepers, timekeepers, firemen, and guards, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action :

Group (1) All employees performing the work of machinists, heavy duty mechanics, maintenance repairmen, maintenance repairman helpers, blacksmiths, blacksmith helpers, and welders, but excluding all foremen, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by International Association of Machinists, for the purposes of collective bargaining, or by neither ;

Group (2) All employees performing the work of painters, excluding foremen, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by International Brotherhood of Painters, Decorators and Paperhangers, Local 567, A. F. of L., for the purposes of collective bargaining, or by neither ;

Group (3) All employees performing the work of carpenters and bulkhead men, excluding foremen, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by United Brotherhood of Carpenters and Joiners of America, Local 632, A. F. of L., for the purposes of collective bargaining, or by neither ;

Group (4) All employees performing the work of electricians, electrician helpers, and panel operators, excluding foremen and communications equipment operators, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by International Brotherhood of Electrical Workers, Local 401, A. F. of L., for the purposes of collective bargaining, or by neither ;

Group (5) All employees performing the work of plumbers, steam fitters, pipe fitters, and pipe fitter helpers, excluding foremen, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by United Association of Journeymen Plumbers and Steamfitters, Local 350, A. F. of L., for the purposes of collective bargaining, or by neither ;

Group (6) All employees performing the work of flat rack truck drivers, heavy duty truck drivers, pick-up truck drivers, water wagon drivers, warehousemen, and service station attendants, excluding truck drivers engaged in the transportation of concentrates from the mill to the loading dock who are employees of an independent contractor, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local 533, A. F. of L., for the purposes of collective bargaining, or by neither;

Group (7) All employees who operate power driven machinery, specifically ball mill operators, burnermen, furnacemen, churn drill operators, compressor operators, core drill operators, core drill operator helpers, crusher operators, crusher apprentices, diamond drill operators, diamond and churn drill apprentices, drier operators, filter operators, flotation operators, flotation helpers, loading dock operators, mill apprentices, oilers, pump operators, roaster operators, screen operators, shovel operators, shovel apprentices, stacker operators and tractor operators, excluding welders and heavy duty mechanics, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by International Union of Operating Engineers, A. F. of L., for the purposes of collective bargaining, or by neither;

Group (8) All employees performing the work of chuck tenders, pump men, general laborers (production), high scalers, jack hammer men, timber men, leyner operators, loading dock operator helpers, mill laborers, mine laborers, quarrymen, nippers, samplers, pitmen, powdermen, powderman helpers, tailing pond operators, wagon drillers, wagon driller helpers, hodcarriers, weighmasters, and maintenance laborers, to determine whether they desire to be represented by International Union of Mine, Mill & Smelter Workers, C. I. O., or by Construction, General Open Pit Quarry and Mill Workers, Local Union 313, A. F. of L., for the purposes of collective bargaining, or by neither.