

In the Matter of THE ORE & CHEMICAL CORPORATION *and* MINE PRODUCTION WORKERS UNION No. 23602 (A. F. of L.)

In the Matter of THE ORE & CHEMICAL CORPORATION *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, MINE, MILL AND SMELTER WORKERS OF COLORADO, LOCAL No. 400 (A. F. of L.)

In the Matter of THE ORE & CHEMICAL CORPORATION *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS (C. I. O.)

Cases Nos. 17-R-814, 17-R-815, and 17-R-852, respectively.—Decided April 24, 1944

Mr. Kurt Spohr, of Leadville, Colo., for the Company.

Mr. S. W. Johnson, of Denver, Colo., and *Mr. Lee Saiman*, of Leadville, Colo., for the Production Workers and the Operating Engineers.

Mr. M. C. Frazier, of Denver, Colo., for the Smelter Workers.

Mr. David V. Easton, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by International Union of Mine, Mill, and Smelter Workers (C. I. O.), herein called the Smelter Workers, and upon amended petitions duly filed by International Union of Operating Engineers, Mine, Mill, and Smelter Workers of Colorado, Local No. 400 (A. F. of L.), herein called the Operating Engineers, and Mine Production Workers Union, Local No. 23602 (A. F. of L.), herein called the Production Workers, alleging that questions affecting commerce had arisen concerning the representation of employees of The Ore & Chemical Corporation, Leadville, Colorado, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was

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held at Leadville, Colorado, on March 10, 1944. The Company, the Smelter Workers, the Operating Engineers, and the Production Workers 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

The Ore & Chemical Corporation is a New York corporation qualified to do business in the State of Colorado, with its principal office and place of business located in New York City. It is engaged at its Leadville, Colorado, mill in the milling of lead and zinc ores. Between July 25 and December 31, 1943, the Company milled approximately 80,000 to 90,000 tons of ore, producing zinc and lead middlings. The zinc and lead middlings, after further processing, were reduced to recoverable metallic zinc and lead, and thereafter shipped in interstate commerce through and to States other than the State of Colorado.

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

II. THE ORGANIZATIONS INVOLVED

Mine Production Workers Union No. 23602 and International Union of Operating Engineers, Mine, Mill, and Smelter Workers of Colorado, Local No. 400, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

III. THE QUESTIONS CONCERNING REPRESENTATION

On or about January 7, 1944, the Production Workers and the Operating Engineers each requested recognition from the Company as the representative of certain groups of the Company's employees at its Leadville mill. On or about March 3, 1944, the Smelter Workers made a similar request of the Company. The Company refused all three requests, stating, in effect, that in view of the conflicting claims, no labor organization would be recognized until it was properly certified by the Board.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the labor organizations involved herein represent a substantial number of employees in their respective proposed units.¹

We find that questions affecting commerce have 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 Production Workers seeks a unit comprised of production and general maintenance employees, excluding supervisors, office clerks, carpenters, electricians, mechanics, welders, and cone, crusher, crockett, and tractor operators and helpers. The Operating Engineers seeks a unit comprised of electricians, mechanics, welders, and cone, crusher, crockett, and tractor operators and helpers, excluding supervisors, office clerks, carpenters, and those employees in the unit sought by the Production Workers. The Company and the Smelter Workers contend that a single industrial unit including the employees sought by both the Production Workers and the Operating Engineers, excluding only supervisors and office clerks, is appropriate.

The unit sought by the Production Workers consists of employees designated by the Company as laborers, and that proposed by the Operating Engineers is comprised generally of production and maintenance employees and helpers engaged in various crafts. The record discloses that only a slight difference in skill exists between the laborers sought by the Production Workers and the craft helpers, or operator assistants, sought by the Operating Engineers, and that the difference in pay between the two groups amounts, in most cases, to 10 cents per hour. Moreover, the mill manager testified that it was not unusual for a person classified as a laborer to perform work as an assistant operator or helper. It would appear, therefore, that the units proposed by the Production Workers and the Operating Engineers are not separated by any clear functional line. Furthermore, the combined units sought by the Production Workers and Operating Engineers

¹ The report of the Field Examiner with respect to the designations submitted by the Smelter Workers, the Operating Engineers, and the Production Workers bearing apparently genuine original signatures of persons whose names appear upon the Company's pay roll dated February 15, 1944, may be summarized by the following chart:

Name of organization :	Number in unit proposed by organization	Number of designations submitted
Smelter Workers	61	31
Operating Engineers	16	*13
Production Workers	38	12

*The Operating Engineers submitted 2 additional designations which contained the names of persons appearing upon the afore-mentioned pay roll in the unit proposed by the Production Workers

differ from the unit sought by the Smelter Workers only with respect to the inclusion of carpenters, whom neither the Operating Engineers nor the Production Workers desires to represent for the reason that another labor organization affiliated with the American Federation of Labor has jurisdiction over them. However, the unit proposed by the Operating Engineers includes therein electricians, and mechanics, classifications of employees customarily represented by other labor organizations affiliated with the American Federation of Labor. Under these circumstances, and since the Smelter Workers desires to represent the carpenters as part of an industrial unit, we see no justification for excluding them from the collective bargaining unit.

In view of the foregoing, we are of the opinion and find that all production and maintenance employees of the Company at its Leadville mill, including laborers, carpenters, electricians, mechanics, welders, and cone, crusher, crockett, and tractor operators and helpers, but excluding office clerks and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute an appropriate unit within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

Since the combined units sought by the Production Workers and the Operating Engineers differ from that found appropriate only with respect to the inclusion of carpenters, and since the record reveals that a labor organization also affiliated with the American Federation of Labor admits such employees to membership, 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, to determine whether they desire to be represented by the Smelter Workers, or by the "American Federation of Labor," for the purposes of collective bargaining, or by neither of these organizations.

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 The Ore & Chemical Corporation, Leadville, Colorado, 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 Seventeenth 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 employes 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, and Smelter Workers, affiliated with the C. I. O., or by the American Federation of Labor, for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petitions for investigation and certification of representative of employees of The Ore & Chemical Corporation, Leadville, Colorado, filed by International Union of Operating Engineers, Mine, Mill and Smelter Workers of Colorado, Local 400 (A. F. of L.), and Mine Production Workers Union No. 23602 (A. F. of L.), be, and they hereby are, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision, Direction of Election and Order.