

In the Matter of PHELPS DODGE COPPER PRODUCTS CORPORATION, HABIRSHAW CABLE AND WIRE DIVISION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, C. I. O.

Case No. 2-R-4621.—Decided May 18, 1944

Messrs. Robt. G. Page and Chas. F. Failey, of New York City, for the Company.

Mr. Morton Stavis, of New York City, for the C. I. O.

Mr. Harold Stern, of New York City, for the A. F. of L.

Mr. William Whitsett, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Phelps Dodge Copper Products Corporation, Habirshaw Cable and Wire Division, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Martin I. Rose, Trial Examiner. At the commencement of the hearing the Trial Examiner granted the motion of Local No. 3 of the International Brotherhood of Electrical Workers, A. F. of L., herein called the A. F. of L., to intervene. Said hearing was held at New York City on April 14, 1944. The Company, the C. I. O., and the A. F. of L. appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Trial Examiner reserved ruling on motions of the Company and the A. F. of L. to dismiss the petition for want of a proper showing of a substantial interest on the part of the C. I. O. For reasons appearing in Section III, below, the motions are 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. The requests of the Company and the A. F. of L. for oral argument are denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Delaware corporation, is engaged in the manufacture and sale of copper and brass wire, cables, cords, and allied products. This proceeding concerns the Company's plants at Yonkers and Nepperham, New York. During 1943 the raw materials purchased by the Company for use at these plants were valued in excess of \$500,000; of this amount more than 80 percent was shipped from sources outside the State of New York. During the same period, the Company sold and shipped more than 75 percent of its finished products, valued in excess of \$500,000; to points outside the State.

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

II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Local No. 3 of the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 9, 1944, the C. I. O. wrote the Company that it represented a majority of the employees at its Habirshaw Cable and Wire Division and requested a meeting to discuss a contract. The Company replied that the A. F. of L. had been certified by the Board on February 4, 1941, and that it had entered into a contract with the A. F. of L. on May 31, 1943. The record shows that this contract was signed on May 31, 1943; that it provides for maintenance of membership and is to remain in effect, until May 31, 1944, and from year to year thereafter, provided that either party may terminate the contract after the end of the first year by giving at least 60 days' notice of such termination; that the A. F. of L. gave the Company 60 days' notice of its intention to terminate the contract and commenced negotiations for a new contract in March 1944; and that such negotiations were pending at the time of the hearing.

The A. F. of L. contends that its contract is a bar to this proceeding. In view of the fact that the contract has been in effect for almost its allotted term; that the contract will terminate on May 31, 1944;

and that negotiations for a new contract are now being conducted, the existing contract is no bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.¹ The A. F. of L. has an interest in this proceeding growing out of its contract.

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

We find, in accord with a stipulation of all the parties, that all hourly rated maintenance and production employees employed at the Company's Habirshaw Cable and Wire Division at Yonkers and Nepperham, New York, including mill or production clerks and inspectors, but excluding foremen, assistant foremen, technical and engineering employees, timekeepers, watchmen, guards, office and clerical employees other than mill or production clerks, and 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, 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.

¹ The Field Examiner reported that the C. I. O. submitted 1,456 application cards, of which 68 percent was dated since January 1, 1944; 12 percent, between July 1 and December 31, 1943; 8 percent, between January 1 and June 30, 1943; 1 percent, during other periods in 1943; and 11 percent, undated. The report also states that there are approximately 3,900 employees in the appropriate unit.

The Company and the A. F. of L. contend that there is no showing that the C. I. O. has a sufficient interest in the proceeding because it does not appear that the Field Examiner checked the application cards against the Company's pay roll to ascertain that the applicants were employed by the Company or to determine the authenticity of the signatures appearing on the cards. There is no merit in this contention. It appears from the record that a *prima facie* showing of substantial representation was made by the C. I. O. The only purpose of such cards is to prevent organizations having little or no chance of being designated as bargaining agent from dissipating and wasting the Board's processes and the time and efforts of employees and employers. After the Board's agent, working under the supervision of the Regional Director, has satisfied himself by the most practical means available in the circumstances of a particular case, that the evidence submitted and reported appears valid and genuine, we do not permit examination into the validity of the evidence submitted to him or into his report. The Company and the A. F. of L. in effect seek to prescribe the degree of proof that the Board may require of those seeking to evoke its processes. This is an administrative function wholly within the provinces of the Board. See Eighth Annual Report, pp. 43-44.

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 Copper Products Corporation, Habirshaw Cable and Wire Division, at Yonkers and Nepperham, New York, 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 Second 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 the 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 United Electrical, Radio & Machine Workers of America, C. I. O., or by Local No. 3 of the International Brotherhood of Electrical Workers, A. F. of L., for the purposes of collective bargaining, or by neither.