

In the Matter of CLIMAX MOLYBDENUM COMPANY *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, (C. I. O.)

In the Matter of CLIMAX MOLYBDENUM COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, MINE, MILL AND SMELTER WORKERS OF COLORADO, LOCAL No. 400, (A. F. L.)

Cases Nos. 17-R-835 and 17-R-859, respectively.—Decided May 20, 1944

Mr. Jean S. Brittenstein, of Denver, Colo., for the Company.

Mr. Marion C. Frazier, of Denver, Colo., for the C. I. O.

Messrs. Carl Meyers and Homer Meyers, of Denver, Colo., for the Engineers.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by International Union of Mine, Mill and Smelter Workers, (C. I. O.), herein called the C. I. O., and by International Union of Operating Engineers, Mine, Mill and Smelter Workers of Colorado, Local No. 400, (A. F. L.), herein called the Engineers, alleging that questions affecting commerce had arisen concerning the representation of employees of Climax Molybdenum Company, at Climax, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Denver, Colorado, on April 12, 1944. The Company, the C. I. O., and the Engineers appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board.¹ During the course of the hearing, the Com-

¹ The Company requested an opportunity for oral argument before the Board. We perceive no necessity for oral argument in the instant proceeding. Accordingly, the request is hereby denied.

pany moved to dismiss the petition filed by the Engineers in Case No. 17-R-859, on the ground that the Engineers had failed to demonstrate that it represents a sufficient number of employees within the unit it alleges to be appropriate to raise a question concerning representation. For reasons stated in Section IV, *infra*, we hereby deny the motion. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Climax Molybdenum Company, a Delaware corporation having its principal offices in New York City, operates a plant at Climax, Colorado, at which it is engaged in mining and milling molybdenum ore. During the year 1943, the Company produced over 80,000,000 pounds of molybdenum concentrates valued in excess of \$1,000,000, approximately 99 percent of which was shipped from its plant at Climax, Colorado, to points outside the State of Colorado. The Company admits and we find that at its Climax, Colorado, plant it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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.

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

III. THE QUESTIONS CONCERNING REPRESENTATION

By letter dated February 9, 1944, the C. I. O. informed the Company that it represented a majority of the employees at the Climax plant within an alleged appropriate bargaining unit and requested recognition as their exclusive bargaining representative. On or about February 11, 1944, the Company advised the C. I. O. that it refused to accord the requested recognition unless and until the C. I. O. is certified by the Board. Thereafter, on February 12, 1944, the C. I. O. filed the petition in Case No. 17-R-835.

On or about March 8, 1944, the Engineers made a similar request of the Company with respect to the employees within the unit it alleges

to be appropriate. The Company also refused to recognize the Engineers unless and until it is certified by the Board. The Engineers is the petitioner in Case No. 17-R-859.

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees within the unit it alleges to be appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The Company's mine and mill at Climax, Colorado, are operated as one functional unit. The mill is approximately 2,000 feet from the portal of the mine. The molybdenum ore, after being extracted from the mine, is transported by means of electrical trains to the mill where it undergoes various processes and emerges as molybdenum concentrate which is sacked or barreled for shipment. The Company's plant, in addition to the mine and mill, comprises various buildings which house supply warehouses, machine shops, carpenter shops, blacksmith shops, sand and aggregate plants, boilers, and other operational equipment. The Company also maintains its own hospital and clinic, recreation hall, and gymnasium for the use of its employees. An extensive waterworks and tailings disposal system is an essential part of the plant's operation. A number of the Company's employees live in a hotel which is located on the Company's property but is operated by another company, and the hotel employees are not on the Company's pay roll. The plant's office is located at the mill. Employment is handled through a single personnel office and all interdepartmental transfers must clear through this office. The management maintains uniform labor relations policies for the entire plant. All parties agree and we find that the over-all operations at Climax, Colorado, constitute a single functional unit for the purposes of collective bargaining.

Contentions of the parties

The C. I. O. seeks a unit comprised of all production and maintenance employees of the Climax plant, excluding supervisors, office clerks, timekeepers, watchmen, guards, technicians, nurses, and hotel employees. The Company is in substantial agreement with this proposed unit except that it would expand the unit to include certain

² The Field Examiner reported that the C. I. O. submitted 313 authorization application cards bearing the names of persons whose names appear on the Company's pay roll of March 5, 1944, which contains the names of 642 employees within the unit claimed appropriate by the C. I. O.

office employees, clerks, engineers, nurses, and draftsmen, contending that these additional employees are properly a part of the plant-wide unit since they are hourly paid employees who have interests in common with the production and maintenance employees. The Engineers contends that a separate unit of all operators of power driven machinery, maintenance mechanics, welders, and helpers employed at the Climax plant, is appropriate.³ The C. I. O., contending for a plant-wide production and maintenance unit, and the Company allege that inasmuch as all employment in the mine and mill is correlated and employees are used interchangeably in all job classifications, the alleged craft unit proposed by the Engineers is not appropriate. The Company states that due to frequent inclement weather many of its employees, who live as far as 30 miles from the plant, are unable to report for work with any degree of regularity. This forced absenteeism, argues the Company, necessitates a high rate of interchange of persons between various job classifications and therefore further militates against the establishment of the unit sought by the Engineers. Even though these facts may be true, we are of the opinion that there is no appreciable difference between the Company's personnel situation and that of other companies engaged in mining and milling various types of ore.

The Company's plant is divided into various operating and maintenance departments each of which performs an essential function in the extraction or processing of molybdenum ore. Each department is an integral part of the entire plant. These facts demonstrate the feasibility of a plant-wide production and maintenance unit. On the other hand, however, it appears that the employees in the unit proposed by the Engineers, except for certain named exclusions, comprise a homogeneous and identifiable group engaged in work which we have found to be sufficiently distinguishable from that of other production and maintenance employees in the mining industry to warrant establishment as a separate unit.⁴

As indicated in Section III, *supra*, the C. I. O. produced evidence indicating that it has organized a substantial number of employees in its proposed bargaining unit. The showing made by the Engineers, while smaller, indicates that a considerable number of employees within the unit which it alleges to be appropriate are desirous of bargaining as a separate unit. Moreover, there is no history of col-

³ The unit proposed by the Engineers embraces the following pay-roll classifications: motorman—first and second-class, whistle punk, slusher operator, pumperete, finley operator, mechanic—first and second-class, screen operator, oiler (except oilers in the electrical department), boiler fireman, tripper operator, crane operator, filter operator, flotation operator, welder, conveyor operator, pumpman, jaw operator, ball mill operator, relief operator, shifter crusher, waterplant operator, tractor driver, shovel operator, tractor driver helper, mechanics' helper, mechanics' jigger boss, hoistman, compressor operator, and slusher repair first-class.

⁴ See *Matter of Manganese Ore Company*, 54 N. L. R. B. 1192, and cases cited therein.

lective bargaining among the Company's employees which may be considered in determining the appropriate unit.

In this situation, we are of the opinion that our determination of the scope of the bargaining unit or units should depend, in part, upon the desires of the affected employees themselves, to be expressed at the separate elections which we hereinafter direct.⁵ Consequently, we shall make no final determination of the appropriate unit or units at this time.

There remains for consideration the specific composition of the voting groups.

Hourly paid office, clerical, and technical employees

The Company seeks to include in a plant-wide unit hourly paid draftsmen, engineers, nurses, industrial hygienist, and such office employees as stenographers, clerks, timekeepers, and accounting employees. The C. I. O. takes the position that the interests of these employees are essentially different from those of the production and maintenance employees and therefore they should not be included in such a unit. The evidence shows that the draftsmen and engineers involved are professional employees whose technical knowledge and experience indicate that their interests in matters of collective bargaining are diverse from those of the production and maintenance employees. Accordingly, we shall exclude them from the voting groups. We shall also exclude the nurses and the industrial hygienist since they are technical employees whose functions are unconnected with and whose interests are dissimilar from those of the production and maintenance employees. The afore-mentioned office employees perform essentially clerical functions. We shall exclude them as well.

Bosses

All parties agree to the inclusion of jigger, grizzly, loading, and mechanic jigger bosses in the appropriate unit or units. These several classifications of bosses are employed in the various departments of the plant to direct the work of groups of employees. Their wages are only slightly higher than those of the employees with whom they work. They possess none of the *indicia* of authority customarily vested in supervisory employees. We shall include each of these bosses within whichever voting group embraces the employees whose work he directs.

Welders

The Engineers desires to include welders within its proposed unit. The record discloses that although the welders are skilled workers their work is not confined to repairing power-driven machinery, but they also do general maintenance welding throughout the plant. Since

⁵ See *Matter of Kennecott Copper Corporation, Nevada Mines Division*, 51 N. L. R. B. 1140

their interests are more closely connected with those of the employees comprising the C. I. O.'s proposed unit, we shall include the welders in that voting group.

Upon the basis of the entire record in the case and in accordance with the foregoing findings of fact, we shall direct that the questions concerning representation which have arisen be resolved, in part, by elections by secret ballot among the employees of the Company's Climax, Colorado, plant within the groups described below. There shall be included in each of the voting groups the bosses who direct the work of any of the employees within the group. There shall be excluded from each voting group, in addition to others specifically mentioned therein, all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The respective voting groups shall be as follows:

(1) All operators of power-driven machinery, maintenance mechanics and helpers, excluding welders, to determine whether they desire to be represented by the Engineers or by the C. I. O., for the purposes of collective bargaining, or by neither;

(2) All remaining production and maintenance employees, including welders, but excluding office and clerical employees, timekeepers, watchmen, guards, technical and professional employees, nurses, and hotel employees, to determine whether or not they desire to be represented by the C. I. O., for the purposes of collective bargaining.

As previously stated there will be no final determination of the appropriate unit or units pending the results of the elections. The employees eligible to vote shall be those who were employed in the eligible categories during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the customary limitations and additions set forth in the Direction.⁶

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 Climax Molybdenum Company, at its plant located at Climax, Colorado, elections by secret ballot shall be conducted as early as possible but not later

⁶ At the hearing the labor organizations requested that their names appear on the ballots as set forth hereinafter in the Direction of Elections. In the event of certification, however, the certified labor organization shall be designated as its name appears in Section II, *supra*.

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 employees of the Company's Climax, Colorado, plant in each of the groups described below, 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, and further including in each group the working bosses who direct the work of any of the employees in the group, but excluding employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, and further excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All operators of power-driven machinery, maintenance mechanics and helpers, excluding welders, to determine whether they desire to be represented by the International Union of Operating Engineers, Mine, Mill and Smelter Workers of Colorado, Local No. 400, A. F. L., or by the C. I. O., for the purposes of collective bargaining, or by neither;

(2) All remaining production and maintenance employees, including welders, but excluding office and clerical employees, timekeepers, watchmen, guards, technical and professional employees, nurses, and hotel employees, to determine whether or not they desire to be represented by the C. I. O. for the purposes of collective bargaining.