

In the Matter of THE NATIONAL COPPER AND SMELTING Co. and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL 735 (CIO)

*Case No. 8-R-1644.—Decided October 31, 1944*

*Squires, Sanders and Dempsey, by Mr. Harry J. Crawford, and Mr. Curtis Lee Smith, of Cleveland, Ohio, for the Company.*

*Mr. Jack Parsons, of Cleveland, Ohio, for the C. I. O.*

*Mr. Sidney Grossman, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the International Union of Mine, Mill and Smelter Workers, Local 735 (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The National Copper and Smelting Co., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Cleveland, Ohio, on September 30, 1944. The Company and the C. I. O. 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.<sup>1</sup> At the hearing the Company made a motion to dismiss the petition alleging in support thereof that a current agreement with the Independent operates as a bar to this proceeding. The Trial Examiner reserved ruling. For the reasons set forth in Section III below, 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.

<sup>1</sup> Although Notice of Hearing was served upon the Independent Workers Association, herein called the Independent, it did not enter an appearance or participate in the proceeding.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The National Copper and Smelting Co., an Ohio corporation, with its principal office and place of business at Cleveland, Ohio, is engaged in the manufacture of seamless brass and copper tubing. During the year 1943, its purchases of raw materials were in excess of \$200,000, of which approximately 30 percent was secured from sources outside the State of Ohio. During the same period it produced finished products in excess of \$250,000, of which 50 percent was shipped to points outside the State of Ohio.

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

#### II. THE ORGANIZATION INVOLVED

The International Union of Mine, Mill and Smelter Workers, Local 735, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On August 7, 1944, the Union addressed a registered letter to the Company, therein requesting recognition as the exclusive bargaining agent of the employees of the Company. On September 5, 1944, the Company informed the Union that it would not extend the requested recognition in view of the former's current agreement with the Independent.

The Independent was certified by the Board as the bargaining representative of the production and maintenance employees of the Company in 1941,<sup>2</sup> and has thereafter had a continuous contractual relationship with the Company. A new contract was executed in February 1944, which by its terms expires on December 31, 1944. We do not agree with the Company's contention that the contract operates as a bar to this proceeding. The record reveals that, as a result of dissatisfaction with the organization, members of the Independent, by unanimous vote of those present, at a meeting held on August 6, 1944, elected to dissolve the Independent and to affiliate with the C. I. O. Notification of such action was communicated to the Company in the Union's letter dated August 7, 1944, above referred to.

<sup>2</sup> *Matter of The National Copper and Smelting Co.*, 30 N. L. R. B. 973, 31 N. L. R. B. 839.

There is no evidence that the Independent has continued as a functioning organization. In view of the foregoing, we find that the contract of February 1944 does not constitute a bar to this proceeding.<sup>3</sup>

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 appropriate.<sup>4</sup>

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 substantial accordance with an agreement of the parties, that all production and maintenance employees of the Company, at Cleveland, Ohio, including working foremen, watchmen, and student employees, but excluding clerical employees, timekeepers, the superintendent, and assistant superintendent, and all or 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.<sup>5</sup>

#### 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 payroll 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 Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The National

<sup>3</sup> *Matter of Columbia Baking Company*, 54 N. L. R. B. 638, *Matter of Illinois Gear and Machine Co.*, 53 N. L. R. B. 179

<sup>4</sup> The Field Examiner reported that the CIO submitted 61 authorization cards, and that an examination of a Company pay-roll list, as of September 22, 1944, indicated that the designations evidence a representation of at least 75 percent in an alleged appropriate unit consisting of 80 employees. Three cards were dated May 1944, 1 in August 1944, and 57 were undated.

<sup>5</sup> This conforms to the unit found appropriate in the prior proceeding. See footnote 2, *supra*.

Copper and Smelting Co., Cleveland, Ohio, 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 Eighth 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 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 or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, Local 735, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.