

In the Matter of SALMON & COWIN, INC., MINING ENGINEERS & CONTRACTORS, AND MINE AND CONTRACTORS SUPPLY CO., INC. and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Case No. 10-R-1302.—Decided November 16, 1944

Messrs. Horace C. Wilkinson, and Borden Burr, of Birmingham, Ala., for the Companies.

Mr. J. P. Mooney, of Bessemer, Ala., for the Union.

Mr. Louis R. Mercado, 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, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Salmon & Cowin, Inc., Mining Engineers & Contractors, herein called Salmon Company, and Mine and Contractors Supply Co., Inc., herein called the Supply Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Birmingham, Alabama, on October 19, 1944. Salmon Company, the Supply Company, and the Union 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. 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 COMPANIES

Salmon & Cowin, Inc., Mining Engineers & Contractors, an Alabama corporation with its principal office and place of business in Birmingham, Ala., 59 N. L. R. B., No. 66.

ham, Alabama, is engaged in the business of mining engineering and contracting and the investigation and appraisal of mining property in Alabama. It contracts for the performance of services with respect to mining construction and development, consisting chiefly of excavations of shafts, tunnels, and slopes in coal and ore mines within the State of Alabama exclusively. The greater part of this service is rendered to the Tennessee Coal, Iron & Railway Company, a subsidiary of the United States Steel Company, Sloss-Sheffield Steel & Iron Company, and Alabama Power Company.¹ Salmon Company does an annual business of approximately \$225,000; it annually purchases material and equipment valued at \$65,000, of which 5 percent is purchased from Supply Company, and the balance from other firms within the State of Alabama.

Mine and Contractors Supply Co., Inc., is an Alabama corporation with its principal office and place of business in Birmingham, Alabama. This Company was organized in 1940 to take over certain phases of Salmon Company's business in order to remove certain employees from the jurisdiction of the Federal Wage and Hour Act.² The part of the business taken over from Salmon Company by the Supply Company and in which it is now engaged, is the manufacture, sale, and distribution of tools used in mining machines, equipment for mine and road contractors, and general mining supplies.³ During the past year Supply Company purchased finished materials valued approximately at \$170,000, all of which originated from points outside the State of Alabama; it annually sold materials valued in excess of \$190,000, of which approximately 1 percent was delivered to points outside the State of Alabama.

While Salmon Company and Supply Company maintain separate legal and accounting identities, they are in fact operated as a single integrated enterprise within the same industry.⁴ They have common stock ownership⁵ and managerial control and the operations of the two Companies are coordinated.⁶ Mr. Cowin is president of each

¹ See *Matter of Tennessee Coal, Iron and Railroad Co.*, 32 N. L. R. B. 375; 41 N. L. R. B. 1364; *Matter of Sloss-Sheffield Steel and Iron Co.*, 37 N. L. R. B. 134; *Matter of Republic Steel Corp.*, 37 N. L. R. B. 173.

² This was admittedly done on the suggestion of representatives of the Wage and Hour Division of the Department of Labor. Employees of the Salmon Company performing the work of the operations taken over by Supply Company were transferred to it from Salmon Company.

³ The bulk of Supply Company sales consist of rock drill steel, rock drills, vent tubing, air compressors, pumps, rubber and suction hose, drill repair parts, and rock drill bits, which are principally sold by Supply Company as manufacturer's agent.

⁴ *Matter of Salmon & Cowin, Inc., Mining Engineers & Contractors, and Mine and Contractors Supply Co., Inc.*, 57 N. L. R. B. 845.

⁵ Ownership of the stock of each Company is divided equally between Mr. Cowin and the heirs of the late Mr. Salmon.

⁶ There is some interchange of employees, including the managerial employees, and the clerical force of Salmon keeps the books of both Companies; in each case the respective Company is billed for the time spent by such employees in its services.

Company and actively conducts the operations of each. The Companies maintain their principal offices at the same address.⁷

We find that Salmon Company and Supply Company are engaged in commerce within the meaning of the National Labor Relations Act.⁸

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that the Union, by letter dated August 28, 1944, requested recognition as the exclusive bargaining representative of certain employees of the Salmon Company and the Supply Company, and that by letter dated September 9, 1944, both Companies refused to grant recognition to the Union as exclusive bargaining representative until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner, received for identification at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁹ The Companies objected to the introduction of this statement in evidence, contending that there should be separate units for each Company and that the statement of the Field Examiner merely indicated the total number of employees and union cards for both Companies. The Statement discloses that two cards bear the signatures of employees of Supply Company and subsequent testimony established that there were nine employees of Supply Company eligible for inclusion in the appropriate unit. The Trial Examiner apparently inadvertently omitted to rule on the objection. We find the statement relevant and the objection without merit and order the statement received in evidence as Board's Exhibit No. 3.

We find that a question affecting commerce has arisen concerning

⁷ The premises are owned by Salmon Company which rents office, shop and yard space to Supply Company. Each Company has its own stationery, bank accounts, and telephone numbers, but they maintain an extensive intercommunication system between their offices.

⁸ *N. L. R. B. v. Fainblatt*, 306 U. S. 601; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9); *Consumers Power v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6).

⁹ The Field Examiner reported that the Union submitted 47 cards, all of which bore apparently genuine original signatures; that the names of 46 persons appearing on the cards were listed on both Companies' pay roll of September 20, 1944, which contained the names of 69 employees in the appropriate unit; and that the cards were dated as follows: prior to 1944, 7; January, 16; August, 20; September, 3; undated, 1. These include 2 employees of the Supply Company, 1 of whom, J. P. Milam, has been found by the Board to have been illegally discharged prior to September 20, and whose reinstatement has been ordered. Milam does not appear on the pay roll of September 20. *Matter of Salmon & Cowin, Inc., Mining Engineers & Contractors, and Mine and Contractors Supply Company, Inc.*, 57 N. L. R. B. 845.

the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that the appropriate unit should consist of a single unit of all production and maintenance employees, exclusive of supervisory employees, of both Salmon Company and Supply Company. Salmon Company and Supply Company do not object to an election, but contend that the employees of each Company should be voted in separate units. The Companies take the position that they are separate corporations and distinct legal entities, independent of each other in their business operations.

The evidence establishes that Salmon Company and Supply Company are operated as a single integrated enterprise under common ownership and management. Mr. Cowin is president of both Companies and he coordinates the business and labor relations policy of each Company, interchanging employees when convenient.¹⁰ Under these circumstances and upon the entire record, we find that the employees of Salmon Company and Supply Company have common interests and that the full benefit of their right to self-organization and to collective bargaining will be insured by the establishment of a single appropriate unit.

The parties stipulated that the leadermen¹¹ should be included within the unit. Mr. Cowin testified that these employees "are just the best workers there [are] in the crew." Although they have some minor supervisory authority, their relationship with coemployees approximates that of journeyman-helper. The leadermen may recommend hiring or discharging, but there is no evidence that their recommendations have been given any more weight than that of any other employee. Under the circumstances, we find that the authority and duties of the leadermen do not come within our usual definition of supervisory employees and we shall include them within the unit.¹²

We find that all production and maintenance employees of Salmon Company and Supply Company, including leadermen, but excluding clerical employees and 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.

¹⁰ See *Matter of Salmon & Cowin, Inc., Mining Engineers & Contractors, and Mine and Contractors Supply Company, Inc.*, 57 N. L. R. B. 845; *Matter of Elliott Bay Lumber Co.*, 8 N. L. R. B. 753; *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270.

¹¹ There are eight of these employees; some are paid on a salary basis and some on an hourly basis.

¹² *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778; *Matter of Faultless Caster Corporation*, 53 N. L. R. B. 1335.

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.

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 Salmon & Cowin, Inc., Mining Engineers & Contractors, and Mine and Contractors Supply Co., Inc., Birmingham, Alabama, 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 Tenth 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 or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.