

In the Matter of VERMONT COPPER COMPANY, INC., and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 1-R-2131.—Decided December 11, 1944.

Mr. Stanley C. Wilson, of Chelsea, Vt., for the Company.

Grant & Angoff, by *Mr. Harold B. Roitman*, of Boston, Mass., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Vermont Copper Company, Inc., South Strafford, Vermont, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Greene, Trial Examiner. Said hearing was held at White River Junction, Vermont, on November 13, 1944. The Company and the Union 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 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

Vermont Copper Company, Inc., is a Vermont corporation with its principal place of business at South Strafford, Vermont, where it is engaged in the mining and milling of copper ore. The Company purchases materials valued in excess of \$25,000, monthly, approximately 80 percent of which is shipped to it from points outside the

State of Vermont. During the same period the Company ships products valued at about \$20,000, to points outside the State of Vermont.

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

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The company refuses to recognize the Union as the exclusive collective bargaining representative of its employees.

The Company takes the position that no election should be directed at this time for the reason that in an election conducted on March 23, 1944, a majority of its employees had voted against representation by the Union.¹ Eight months have elapsed since the election. The record discloses that the Union has membership application cards bearing the names of a substantial number of the employees. All of these cards are dated subsequent to the election on March 23, 1944.² Since no collective bargaining representative was chosen as a result of that election, and in view of the fact that a substantial number of the Company's employees appear to have indicated since that election a desire for representation by the Union, we believe that the policies of the Act will best be effectuated by conducting an election on the present petition.³

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

The Union urges that all production and maintenance employees of the Company, including guards, truck drivers, and bulldozer operators, but excluding office and clerical employees, the day guard, master mechanic, draftsmen, engineers, mine and mill superintendents, mine foremen, boss carpenter, shift bosses, and executives, constitute an appropriate unit. The only controversy with respect to the unit concerns the day guard.

The Company employs one person classified as a day guard. He is neither armed, uniformed, nor sworn as an auxiliary military policeman. Prior to his employment with the Company, the day

¹ The record shows that 43 employees voted in favor of the Union and 45 against it.

² According to a statement introduced into evidence at the hearing the Union submitted 37 authorization cards. There are approximately 78 employees within the appropriate unit.

³ *Matter of New York Central Iron Works, Hagerstown, Maryland*, 37 N. L. R. B. 894.

guard was a town deputy sheriff and he has retained his status as such. The record indicates that he does not exercise any supervisory duties at the present time and that his duties are those normally performed by a watchman. We shall include him in the unit.⁴

We find that all production and maintenance employees of the Company, including guards, truck drivers, bulldozer operators, and the day guard, but excluding office and clerical employees, draftsmen, engineers, master mechanic, mine and mill superintendents, mine foremen, shift bosses, boss carpenter, executives, and 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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.

The Company employs 48 persons imported from Newfoundland under individual contracts approved by the United States War Manpower Commission. The contracts provide that the employees be given employment for a specified number of hours. All of the employment contracts will expire on or before January 25, 1945. The Company contends that these employees should be deemed ineligible to vote while the Union urges that they be found eligible to participate in the election. The evidence is uncontradicted that the Company does not intend to retain any of these persons in its employ after the expiration of their employment contracts. Inasmuch as the evidence discloses that the employees in question were hired on a temporary basis and that their employment will terminate in the near future, we find that they are not eligible to participate in the election.

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

⁴ The day guard was previously excluded from the appropriate unit by the Board. However, at that time his duties were supervisory in nature. The record discloses that his duties have been changed since that time.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Vermont Copper Company, Inc., South Strafford, Vermont, 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 First 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 any 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 District 50, United Mine Workers of America, for the purposes of collective bargaining.