

In the Matter of TENNESSEE COPPER COMPANY and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (CIO)

Case No. 10-R-1320.—Decided December 15, 1944

Mr. R. M. McConnell, of Knoxville, Tenn., *Mr. G. Parks Hyatt*, of Ducktown, Tenn., and *Mr. H. G. Harper*, of Copperhill, Tenn., for the Company.

Mr. Homer Wilson, of Bessemer, Ala., *Mr. Charles H. Wilson*, of Strawberry Plains, Tenn., and *Mr. Rubin Kaufman*, of Copperhill, Tenn., for the C. I. O.

Messrs. Joseph Jacobs and *George L. Googe*, of Atlanta, Ga., for the A. F. L.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Mine, Mill & Smelter Workers (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Tennessee Copper Company, Copperhill, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. Said hearing was held at Blue Ridge, Georgia, on October 20, 1944. The Company, the C. I. O., Federal Union No. 21164 and Federal Union No. 21755, both affiliated with the A. F. L., herein collectively called the A. F. 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. At the hearing the A. F. L. and the Company moved to dismiss the petition. The Trial Examiner referred the motions to the Board for determination. For reasons set forth in Section III, *infra*, the motions are denied. All parties filed briefs with the Board and requested oral argument. Inasmuch as the briefs adequately cover all pertinent issues, the requests for oral argument are hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Tennessee Copper Company is a New Jersey corporation having its principal office and place of business at New York City. It operates mines and processing plants in the vicinities of the Copperhill, Ducktown, and Isabella communities, Polk County, Tennessee, known as the Ducktown Basin, where it is engaged in the mining, processing, and sale of copper ore and its byproducts. Raw materials and products purchased by the Company during the 12-month period immediately preceding the date of the hearing were valued in excess of \$2,000,000, of which approximately 75 percent was received from points outside the State of Tennessee. During the same period the Company's finished products were valued in excess of \$10,000,000 of which approximately 90 percent was sold, shipped, and distributed to points outside that State.

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

II. THE ORGANIZATIONS INVOLVED

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

Federal Union Local No. 21164 and Federal Union Local No. 21755, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 21, 1944, the C. I. O. sent a telegram to the Company advising that it represented a substantial number of the Company's production and maintenance employees, stating that it was filing a petition with the Board, and requesting the Company not to make any agreement with any other labor organization until a bargaining agent was determined. On September 22, 1944, the C. I. O. filed the petition herein and on the same day the Board's Regional Director sent a letter to the Company informing it of the filing of the petition and suggesting a consent election. The Company did not reply to either of these communications.

On March 24, 1943, the Company and the A. F. L. made a collective bargaining agreement covering the employees whom the C. I. O. seeks to represent. The contract was to remain in effect until November

18, 1944, and to continue in effect for a period of 1 year thereafter unless 30 days written notice was given by either party, prior to November 18, 1944.

Contending that the telegram of September 21, 1944, was an inadequate demand because it did not state that the C. I. O. represented a majority of the employees and failed to request recognition as exclusive collective bargaining representative, the A. F. L. and the Company assert that their 1943 agreement renewed itself automatically before the Company was properly apprised of a rival claim to representation and therefore precludes a present determination of representatives. Apart from the question of the effectiveness of the September 21 telegram, it is clear that the filing of the petition prior to the operative date of the automatic renewal clause in the 1943 contract was in itself sufficient to prevent the agreement from barring the instant proceeding.¹

There also is testimony by a representative of the A. F. L. that on or about August 20, 1944, while negotiating a wage increase for the Company's guards, who were covered by the 1943 contract, the A. F. L. and the Company orally agreed not to avail themselves of the 30-day clause in the contract and "to continue the contract until November 18, 1945." The argument was made by him that "This was in August and as far as we are concerned the contract was automatically renewed then until November 18, 1945." Even in this posture of the case, no bar exists to a current determination of representatives, for the agreement was not reduced to writing and constituted at best a premature extension of the 1943 contract.²

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.³

¹ See *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1536.

It is noted furthermore, that, before the renewal clause took effect, the Company was actually informed of the filing of the petition, and any doubts on the part of the Company concerning the C. I. O.'s claim to majority representation, occasioned by the wording of the telegram, must have been dispelled by the letter of the Regional Director in which the C. I. O.'s assertion of majority status as alleged in the petition was clearly set forth.

² *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035; and *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369

³ The Field Examiner reported that the C. I. O. submitted 681 authorization cards, of which 561 bore names of persons found on the Company's pay roll for September 27, 1944. The record indicates that there are approximately 1,429 employees in the unit sought by the C. I. O.

The A. F. L. relies upon its 1943 contract to establish its interest in the instant proceeding.

The A. F. L. and the Company claim that the admission into evidence of the Field Examiner's report was improper, on the ground that it is not the best evidence to establish that the C. I. O. was designated by the Company's employees as their representative. They argue that their rights guaranteed by the Fifth Amendment to the Constitution are violated if the weight of competent evidence is accorded the statements contained in the report without affording them the right to cross-examine the Field Examiner and a C. I. O. representative, and the right to inspect the authorization cards submitted by the C. I. O. We

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 parties are in agreement concerning the composition of an appropriate unit. This unit includes about 40 guards for whom the A. F. L. has bargained since the last election among the Company's employees in 1940. The guards are armed, wear a uniform cap and badge, and perform the usual duties of their classification. Six of them, assigned to one of the Company's operations located in a plant owned by the Government, were sworn as auxiliary military police in September 1942, as required by law. The remaining guards, not subject to that requirement, were militarized at their own request. The duties of all guards and their conditions of employment were in no way affected by their militarization. The record is not clear as to whether or not they are now demilitarized, and the A. F. L., at the request of the guards and with the approval of the Company, is endeavoring to ascertain whether the United States Army still deems these guards to be militarized or has released them from their oaths. In accordance with the Board's established policy, we shall exclude militarized guards, if any.⁴ All others shall be included.

We find, in substantial accordance with the agreement of the parties and in accordance with our foregoing determination, that all the Company's employees at its operations in the Ducktown Basin, Polk County, Tennessee, including apprentice chemists⁵ and non-militarized guards, but excluding clerical employees, chemists, technical employees; militarized guards, and all 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.⁶

rejected identical arguments in *Matter of Seneca Falls Machine Company*, 58 N. L. R. B., 1413. "The submission of cards is an expedient adopted by the Board to determine for itself whether or not a question concerning representation has arisen. It is a part of the Board's administrative procedure * * *." *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1577.

⁴ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

⁵ The Company employs 12 girls as apprentice chemists whom the parties agree to include. The record seems to indicate that the A. F. L. has bargained for them heretofore. They are high school graduates who have replaced regular chemists for the duration of the war and who may not be retained permanently. Although they acquire greater knowledge, none of them has attained the status of chemist, a technical classification excluded from the unit also pursuant to the parties' stipulation. They perform routine tests under the supervision of the chief chemist.

⁶ This is the same unit established by the Board in *Matter of Tennessee Copper Company*, 25 N. L. R. B. 218, with the exception of militarized guards and apprentice chemists, two classifications which came into existence after that decision.

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.⁷

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 Tennessee Copper Company, Copperhill, Tennessee, 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 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 they desire to be represented by International Union of Mine, Mill & Smelter Workers (C. I. O.), or by the American Federation of Labor, for the purposes of collective bargaining, or by neither.

⁷ The A. F. L. requests that its name appear on the ballot as set forth in the Direction of Election.