

In the Matter of VIRGINIA SMELTING COMPANY and INTERNATIONAL
CHEMICAL WORKERS UNION, LOCAL No. 55, A. F. OF L.

Case No. 5-R-1772.—Decided February 14, 1945

Mr. A. K. Scribner, of West Norfolk, Va., for the Company.

Mr. John W. Lewis, of Baltimore, Md., for the A. F. of L.

Mr. William O. Hart, of Richmond, Va., for District 50.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Chemical Workers Union, Local No. 55, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Virginia Smelting Company, West Norfolk, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sidney J. Barban, Trial Examiner. Said hearing was held at Norfolk, Virginia, on January 19, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of District 50, United Mine Workers of America, Local No. 12180, herem called District 50, to intervene. The Company, the A. F. of L., and District 50 appeared at and participated in the hearing.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing District 50 moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motions are hereby denied. 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:

¹ Although United Gas, Coke & Chemical Workers of America, C I O, was served with Notice of Hearing, it did not appear.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Virginia Smelting Company is a Maine corporation operating a plant at West Norfolk, Virginia, where it is engaged in the sale, manufacture, and distribution of chemicals. About 90 percent of the raw materials used by the Company is shipped to it from points outside the Commonwealth of Virginia. During 1944 the Company produced products valued in excess of \$1,000,000, 90 percent of which was shipped to points outside the Commonwealth of Virginia.

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

II. THE ORGANIZATIONS INVOLVED

International Chemical Workers Union, Local No. 55, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

District 50, United Mine Workers of America, Local No. 12180, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 19, 1944, District 50 and the Company entered into a written exclusive collective bargaining contract, effective until February 7, 1945, with provision for automatic renewal from year to year thereafter in the absence of written notice to terminate given by either party thereto not less than 30 days prior to any annual expiration date. On November 7, 1944, the A. F. of L. notified the Company that it claimed to represent a majority of the employees involved herein and requested recognition. The company refused to grant such recognition, stating that it was precluded from doing so by its existing contract with District 50. District 50 contends that its contract is a bar to a determination of representatives in this proceeding. Inasmuch as the A. F. of L. made its claim upon the Company prior to January 7, 1945, the effective renewal date of the contract, we find that the contract does not constitute a bar to a determination of representatives at this time.

District 50 further contends that according to the constitution of the A. F. of L., the latter cannot admit to membership some of the employees herein concerned, and that the present proceeding should therefore be dismissed. However, the A. F. of L. stated that it would admit such employees to membership and since there is no showing that the A. F. of L. will not award adequate representation to all em-

ployees included in the unit herein found appropriate,² we find no merit in the contention of District 50.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found to be appropriate.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 Company and District 50 contend that all production and maintenance employees of the Company, excluding professional and technical employees, clerical employees, janitors, cafeteria employees, watchmen, supervisors, assistant supervisors, the plant engineer, the storekeeper-timekeeper, shipping foremen, and shift foremen, constitute a unit appropriate for the purposes of collective bargaining. The only controversy with respect to the unit concerns the shift foremen and shipping foremen; the A. F. of L. would include them in the unit.

The Company employs 12 shift foremen and 3 shipping foremen. Although the shift foremen and shipping foremen are paid on an hourly rate, they receive from 10 to 35 cents more per hour than their subordinates. The record indicates that the shift foremen and shipping foremen have authority to discipline their subordinates and that they can effectively recommend discharges. During the hours between 8 p. m. and 8 a. m. the shift foremen are the highest ranking employees in the plant. The shift foremen and shipping foremen are excluded from the terms of the contract between the Company and District 50, alluded to above. We conclude that the shift foremen and shipping foremen are supervisory employees and, as such, we shall exclude them from the unit.

We find that all production and maintenance employees of the Company, excluding professional, technical, clerical, and cafeteria employees, janitors, watchmen, supervisors, assistant supervisors, the plant engineer, the storekeeper-timekeeper, shift foremen, shipping foremen, 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

² See *Matter of Platzer Boat Works*, 59 N. L. R. B. 292.

³ The Field Examiner reported that the A. F. of L. presented 60 authorization cards bearing the names of persons who appear on a current pay roll of the Company. There are approximately 130 employees in the appropriate unit. District 50 did not present any evidence of representation, but relies upon its contract as evidence of its interest in the instant proceeding.

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.

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 Virginia Smelting Company, West Norfolk, Virginia, 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 Fifth 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 Chemical Workers Union, Local No. 55, A. F. of L., or by District 50, United Mine Workers of America, Local No. 12180, for the purposes of collective bargaining, or by neither.