

In the Matter of WHITE BROS. SMELTING CORP. and INTERNATIONAL  
UNION OF MINE, MILL & SMELTING WORKERS, CIO

*Case No. 4-R-1610.—Decided April 5, 1945*

*Mr. Thomas N. Hyndman*, of Philadelphia, Pa., for the Company.

*Mr. William T. Moriarty*, of Waterbury, Conn., for the CIO.

*Messrs. Syme & Simons*, by *Mr. Maurice Abrams*, of Philadelphia, Pa., for the AFL.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Mine, Mill & Smelter Workers, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of White Bros. Smelting Corp., Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on February 20, 1945. The Company, the CIO, and Local 57, International Hod Carriers, Building and Common Laborers' Union, Laborers' District Council of Philadelphia, AFL, herein called the AFL, 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 AFL moved to dismiss the petition on the ground that no question concerning representation has arisen. Ruling was reserved for the Board. For the reason set forth in Section III, *infra*, the motion is granted. 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 COMPANY

White Bros. Smelting Corp., a Maryland corporation, is engaged in the business of Smelting copper and brass at Philadelphia, Pennsylvania. During the year 1944, the Company purchased raw materials consisting principally of copper and brass, amounting to \$3,500,000 in value of which 50 percent was secured from sources outside the Commonwealth of Pennsylvania. During the same period, the Company's finished products approximated \$4,500,000 in value, of which 50 percent was shipped to points outside the Commonwealth of Pennsylvania.

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.

Local 57, International Hod Carriers, Building and Common Laborers' Union, Laborers' District Council of Philadelphia, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

#### III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On November 28, 1944, the CIO addressed a letter to the Company wherein it requested recognition as the bargaining representative of the Company's employees. By letter dated November 30, 1944, the Company refused to accord recognition to the CIO in view of an existing agreement between the Company and the AFL.

The Company and the AFL entered into a written collective bargaining agreement on November 1, 1943. Prior to its expiration on August 1, 1944, the agreement was extended through an interchange of letters for a period of 1 year. Both the Company and the AFL maintain that the agreement of November 1943, as extended, constitutes a bar to this proceeding. The CIO, however, contends that the AFL's ineffectiveness as a labor organization warrants a present determination of its status as the bargaining representative of the Company's employees. The evidence does not support the CIO's contention. The AFL maintains an office, conducts regular monthly meetings, and has a business agent available for consideration of employees'

grievances. Although it has agreed not to invoke the closed-shop provision of its agreement with the Company for the period of the war's duration, it continues to issue work permits to new employees and has been active in seeking to effect wage adjustments for the employees. Although there may be a considerable group of employees who are dissatisfied with the representation accorded them by the AFL,<sup>1</sup> the record clearly discloses that the AFL has not ceased to function as the bargaining representative of the Company's employees and that, in general, the provisions of its agreement with the Company have been observed. The circumstances here present do not, therefore, warrant a departure from the established principle that a valid existing contract of reasonable duration constitutes a bar to a determination of representatives during its term. Accordingly, we find that the agreement between the Company and the AFL constitutes a bar to a present determination of representatives. We shall therefore dismiss the petition without prejudice to the right of the petitioner seasonably to file a new petition.<sup>2</sup>

#### ORDER .

Upon the basis of the above findings of fact, and the entire record in the case, the Board hereby orders that the petition for investigation and certification of representatives of employees of White Bros. Smelting Corp., Philadelphia, Pennsylvania, filed by International Union of Mine, Mill & Smelter Workers, CIO, be, and it hereby is, dismissed

<sup>1</sup> The Field Examiner reported that the CIO submitted 138 authorization cards, of which 127 bore dates between October and December 1944, and 11 were undated. The cards were not checked against the Company roll. There are 219 employees in the alleged appropriate unit.

<sup>2</sup> *Matter of Creamer & Dunlap*, 60 N. L. R. B. 437; *Matter of Junior Mercantile Stores Division, West Virginia Coal & Coke Corporation*, 58 N. L. R. B. 1; *Matter of New York Central Iron Works*, 56 N. L. R. B. 812.