

In the Matter of AMERICAN SMELTING AND REFINING COMPANY *and*
INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,
LOCAL 72, C. I. O.

Case No. 19-R-1477.—Decided April 12, 1945

Mr. E. G. Toomey, of Helena, Mont., for the Company.

Mr. Owen McNally, of Anaconda, Mont., 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 International Union of Mine, Mill and Smelter Workers, Local 72, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Smelting and Refining Company, East Helena, Montana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Helena, Montana, on February 22, 1945. 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

1. THE BUSINESS OF THE COMPANY

American Smelting and Refining Company is a New Jersey corporation operating a plant at East Helena, Montana, where it is engaged in custom lead smelting. Approximately 25 percent of all raw materials used by the Company is shipped to it from points outside the

State of Montana. The Company produces about 4,000 tons of lead, monthly, at its East Helena plant, all of which is shipped to points outside the State of Montana.

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

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill and Smelter Workers, Local 72, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During December 1944, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the technical and office employees at the East Helena plant. The Company refused this request, stating that it doubted the Union's claim to majority.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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 office and technical employees at the East Helena plant of the Company, including the financial bookkeeper, metallurgical bookkeeper, chief settlement clerk, assistant to chief chemist, head timekeeper, assistant chief clerk, secretary to the superintendent and chief clerk, and assistant to the safety inspector and personnel director, but excluding manager's secretary, chief clerk, chief chemist, purchasing agent, and safety director and personnel director, constitute a unit appropriate for the purposes of collective bargaining. The Company claims that the assistant chief clerk, assistant to the safety inspector and personnel director, head timekeeper, and assistant to chief chemist are supervisory employees; it further contends that the financial bookkeeper, metallurgical bookkeeper, chief settlement clerk, and secretary to the superintendent and chief clerk are confidential employees. Accordingly, it would exclude these eight employees from the unit.

¹ The Field Examiner reported that the Union submitted 20 authorization cards. There are approximately 25 employees in the appropriate unit

The main office, composed of about 13 employees, is in charge of the chief clerk. The *assistant chief clerk* spends most of this time performing accounting work, but during the absence of the chief clerk acts in the latter's capacity. Although the assistant chief clerk makes recommendations with respect to the hire and discharge of employees, it is clear that his recommendations are accorded little weight. We conclude that the assistant chief clerk is not a supervisory employee, and, accordingly, we shall include him in the unit.

The safety inspector and personnel director is in charge of the safety program in the plant and also hires all new production and maintenance employees. This employee keeps complete personnel records and investigates all grievances. The Company also employs an *assistant to the safety inspector and personnel director* who assists the safety inspector in the carrying out of the above-outlined duties. We conclude that the assistant to the safety inspector and personnel director should be excluded from the unit inasmuch as he has access, in the normal course of his duties, to confidential personnel records.

The *head timekeeper* is in charge of calculating the time of plant employees and has two assistants. He allocates labor costs to the various departments of the plant and has access to confidential personnel records of the production and maintenance employees. We shall exclude him from the unit as a confidential employee.

The Company maintains a laboratory wherein it employs seven persons. The chief chemist is in complete charge of the laboratory and hires and discharges employees therein. The parties agree to exclude him from the unit. The Company also employs an *assistant to the chief chemist* in the laboratory, whose duties consist in making chemical analyses which the other chemists are not qualified to perform. He only assumes the functions of the chief chemist during the latter's vacation or periods of illness. We shall include the assistant to the chief chemist in the unit.

The *financial bookkeeper* maintains and is responsible for all financial records of the Company and prepares financial statements for it. The *metallurgical bookkeeper* maintains records concerning all metal purchases, balances, and profits or losses with respect to metals. The *chief settlement clerk* analyzes the Company's records concerning tonnage, values, and assays of metals purchased from other companies. The Company executes royalty agreements based on these records. Although the matters handled by the three above-mentioned employees are considered confidential by the Company from a business viewpoint, they in no way deal with records relating to labor relations matters. We shall, therefore, include these employees in the unit.²

² See *Matter of The Babcock & Wilcox Co.*, 52 N L R B 900; *Matter of United States Smelting, Refining and Mining Company*, 53 N L R B 84

The *Secretary to the superintendent and chief clerk* handles all personnel correspondence for the superintendent and the chief clerk and, in addition, performs the duties of the manager's secretary when the latter is absent or in need of assistance. The parties agree that the manager's secretary should be excluded from the unit because she has access to personnel files. Accordingly, we shall exclude the secretary to the superintendent and chief clerk from the unit.

We find that all office and technical employees at the East Helena plant of the Company, including the assistant chief clerk, financial bookkeeper, metallurgical bookkeeper, chief settlement clerk, and assistant to the chief chemist, but excluding the manager's secretary, assistant to the safety inspector and personnel director, secretary to the superintendent and chief clerk, head timekeeper, safety director and personnel director, chief clerk, chief chemist, purchasing agent, and all 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.

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 American Smelting and Refining Company, East Helena, Montana, 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 Nineteenth 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 immedi-

ately 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 or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, Local 72, C. I. O., for the purposes of collective bargaining.