

In the Matter of AMERICAN SMELTING & REFINING COMPANY and COPPER
EMPLOYEES' ASSOCIATION, INC.

Case No. 5-R-1894.—Decided July 27, 1945

Mr. Paul M. Higinbotham, of Baltimore, Md., for the Company.

Mr. C. F. Sanderson, of Baltimore, Md., for the C. E. A.

Mr. William T. Moriarity, of Baltimore, Md., for the C. I. O.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Copper Employees' Association, Inc., herein called the C. E. A., alleging that a question affecting commerce had arisen concerning the representation of employees of the American Smelting & Refining Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Baltimore, Maryland, on May 15, 1945. The Company, the C. E. A., and International Union of Mine, Mill and Smelter Workers, C. I. O., herein called the C. I. O., 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. 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

American Smelting & Refining Company, a New Jersey corporation, with its principal office in New York City, operates directly and through its subsidiaries 30 smelting and refining plants and 18 mines located throughout the United States, Mexico, and South America. Only the

62 N. L. R. B., No. 204.

Company's Baltimore, Maryland, smelting and refining plant is involved in this proceeding. Substantially all the raw materials used at the Company's Baltimore plant are shipped from points outside the State of Maryland. The Company produces monthly, at its Baltimore plant, 16,000 tons of refined copper, of which 95 percent is shipped to points outside the State of Maryland.

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

II. THE ORGANIZATIONS INVOLVED

Copper Employees' Association, Inc., unaffiliated, is a labor organization admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On March 28, 1945, the C. E. A. advised the Company that it represented a majority of certain of the Company's employees at its Baltimore plant and wished to be recognized as their exclusive representative. On the same date the Company replied that, since it was operating under a current collective bargaining agreement with the C. I. O., it could not recognize the C. E. A.

In November 1943, as a result of a consent election held under the auspices of the Board, the C. I. O. was certified as the sole collective bargaining representative for the Company's employees in the unit hereinafter found appropriate. Sometime in 1944, the C. I. O. entered into a contract with the Company,¹ which provided, in part, as follows:

This Agreement is to be considered effective as of May 1, 1944, and is to continue for a period of one year when it automatically renews itself and continues in full force and effect for a further period of one year, unless written notice is given by either party to the Agreement not less than thirty days prior to the current expiration date that changes are desired in any one or more provisions of the Agreement

By letter dated March 29, 1945, the C. I. O. informed the Company that it wished to make certain changes in the terms and conditions of the contract prior to its renewal. On April 3, 1945, the Company replied, in part, as follows:

The present contract in effect between the Union [C. I. O.] and the Company contains a provision that it automatically renews itself

¹The C. I. O. made the agreement "for itself and in behalf of its local #625."

for a further period of one year unless written notice is given by either party to the agreement not less than thirty days prior to April 30, 1945. Your notice of changes and additions was not received by either Mr. Shepard or myself until April 2, 1945.

We, therefore, consider that the contract dated May 1, 1944, automatically renewed itself because of lack of proper notice to the contrary, and we now consider that the original contract is in full force and effect until April 30, 1946. . . .

Neither the Company nor the C. I. O. claims that the contract precludes a present determination of representatives.² However, the Company contends that, if either union is selected by the employees as their exclusive representative, it should be bound by the contract, which the Company claims has been automatically renewed.

In connection with a similar issue raised in the comparatively recent *Wilson* case,³ which we reaffirm, the Board held as follows:

The Company, while not insisting that the contract is a bar to the present representation proceeding, contends nevertheless, that the Board should rule that, if the C. I. O. is designated as the bargaining agent, its agency during the unexpired term of the contract (claimed by the Company to be still in effect through operation of the automatic renewal) should be limited to the administration of that contract. We find no merit to this contention. Our only function in a proceeding of this character is to ascertain and certify to the parties the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit; it is not our function to direct, instruct, or limit that representative as to the manner in which it is to exercise its bargaining agency.⁴

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the C. E. A. represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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.

² The contract is obviously not a bar, since the C. E. A. apprised the Company of its claim to representation prior to the effective date of the automatic renewal clause. See *Matter of American Fork and Hoc Company*, 57 N. L. R. B. 1072.

³ *Matter of Wilson Packing and Rubber Company*, 51 N. L. R. B. 910.

⁴ See also *Matter of Central Illinois Light Company*, 60 N. L. R. B. 1217, and *Matter of Chrysler Corp.*, 13 N. L. R. B. 1303.

⁵ The Field Examiner reported that the C. E. A. submitted 367 authorization cards, of which 348 were dated between January and April 1945 and 19 were undated. He also reported that there were approximately 830 employees in the alleged appropriate unit.

The C. I. O. relies on its 1944 contract with the Company as evidence of its interest in this proceeding.

IV. THE APPROPRIATE UNIT

We find, in accordance with the agreement of the parties, that all production, maintenance, and cafeteria employees working at the Company's Baltimore, Maryland, plant, excluding all guards and watchmen, laboratory employees, boiler engineers and water tenders, office clericals and department clerks, all supervisory employees of the rank of subforeman and above, 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 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 & Refining Company, Baltimore, Maryland, 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 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 Copper Employees' Association, Inc., or by International Union of Mine, Mill and Smelter Workers, C. I. O., for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.