

In the Matter of INSPIRATION CONSOLIDATED COPPER Co. and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 428, A. F. OF L.

Case No. 21-R-2690.—Decided August 30, 1945

Mr. Edward W. Rice, of Globe, Ariz., and *Mr. P. D. I. Honeyman*, of Inspiration, Ariz., for the Company.

Messrs. W. A. Gray and *R. L. Clark*, both of Phoenix, Ariz., for the C. I. O.

Messrs. Orville Larson and *Claude Lovelett*, both of Globe, Ariz., for the A. F. L.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local No. 428, A. F. of L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Inspiration Consolidated Copper Co., Miami, Arizona, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Globe, Arizona, on June 5, 1945. The Company, the A. F. L., and International Union of Mine, Mill and Smelter Workers, CIO, for itself and on behalf of its Local Union #586, herein collectively 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 C. I. O. moved to dismiss the petition herein. The Trial Examiner reserved ruling on this motion for the Board. For reasons stated in Sections III and V, *infra*, the motion is denied. 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

Inspiration Consolidated Copper Co., a Maine corporation, operates a copper mine, leaching plants and mills at Inspiration, Arizona. The Company produces through its milling processes electrolytic copper, cement copper, and concentrates. The electrolytic copper, which represents approximately 70 percent of the total production, is shipped to the State of New Jersey; the cement copper and concentrates are shipped to a smelter located at Miami, Arizona, where they are treated, and a portion of the resulting blister copper is returned to the Company, while the balance is shipped to the State of New Jersey. During the year 1944, the mine produced approximately 4,055,993 tons of ore, and the copper produced by the Company in that period was valued at about \$10,000,000. During the same time, the Company purchased raw materials and supplies valued in excess of \$2,000,000, of which more than 50 percent was shipped to the Company from points outside the State of Arizona.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local No. 427, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Union of Mine, Mill and Smelter Workers, and its Local Union #586, both affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated February 20, 1945, the A. F. L. requested recognition from the Company as the representative of certain of its employees. The Company refused to accord such recognition.

On March 21, 1944, as the result of a consent election conducted under the auspices of the Board in which the C. I. O. and the A. F. L. were the competing unions, the C. I. O. was designated by the Regional Director as the collective bargaining representative of many of the employees involved herein.¹ Thereafter, the Company and the C. I. O. executed a collective bargaining agreement covering such employees,

¹ Case No. 21-R-2287.

which was made retroactive to November 24, 1943, and dated as of then. The following governed its duration:

2. DURATION OF AGREEMENT

This agreement shall remain in full force and effect for a period of one year from the date thereof, and automatically from year to year thereafter, unless either party shall give the other written notice, not less than thirty (30) days before the expiration of any contract year, of its desire to terminate or change the terms of this agreement. If such notice indicates a desire to change this agreement, the proposed changes shall be set forth therein and they shall become the subject of immediate negotiations between the parties, and this agreement shall continue in effect as written, pending the success or failure of such negotiations. If such notice indicates a desire to terminate this agreement, such termination shall become effective at the close of such contract year.

After due notice pursuant to the above provision, the parties conducted negotiations during November 1944 with respect to proposed changes in the agreement. Certain changes were agreed upon between them, and other proposals, which were in dispute, were submitted by the parties for adjudication to the Non-Ferrous Metals Commission of the National War Labor Board in December 1944. On June 1, 1945, the Commission issued its directive on the disputed matters and on the following day, the C. I. O. appealed therefrom to the National War Labor Board. Meanwhile, on February 20, 1945, the A. F. L. filed its petition herein.

The C. I. O., as noted previously, moved at the hearing for dismissal of the petition, urging, *inter alia*, application of the *Allis-Chalmers* doctrine.² We are of the opinion that the doctrine is not applicable. Although the agreement between the parties had been made retroactive, and was, consequently, operative for less than a year from the date of the C. I. O.'s designation, we must assume that, since it was agreed upon, the parties considered the contract term a reasonable one.³ Furthermore, although evidence was adduced indicating that a "general order of promotion," as provided for by the agreement, was not placed in effect, the contract did embody the full accord of the parties on such matters of substance as union security, check-off, seniority, grievances, wages, and hours, and it was obviously effective as a bar to the claim of another labor organization until shortly before its expiration date.⁴ Under these circumstances, we are of the opinion that the C. I. O. has had a reasonable period in which to act for the employees

² See *Matter of Allis-Chalmers Manufacturing Co.*, 50 N. L. R. B. 306, 311.

³ See *Matter of Southwestern Greyhound Lines, Inc.*, 60 N. L. R. B. 1388.

⁴ Cf. *Matter of Michigan Light Alloys Corporation*, 58 N. L. R. B. 113.

of the Company, and has, in fact, done so. Thus, the C. I. O. cannot now be considered as a newly designated representative, and, consequently, the pendency of proceedings before the National War Labor Board, under these circumstances, does not warrant a refusal of a determination of representatives at this time.⁵ We conclude, therefore, that no proper basis for application of the *Allis-Chalmers* doctrine has been presented herein.⁶ Nor can it be argued that the contract dated November 24, 1943, constitutes a bar to a present determination, for at best it is now of indefinite duration.⁷

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the A. F. L. and the C. I. O. each represents a substantial number of employees in the unit herein-after found appropriate.⁸

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

All parties are substantially in accord with respect to the appropriate unit, agreeing upon the inclusion therein of pumpers, mill men and mill men helpers of the concentrator and slimes-leaching plant; pump operators and oilers of the mechanical and railroad departments; oil transfer men, oilers and firemen of the power plant; double drum hoist operators, single drum hoist operators, tippie men and pumpmen of the Inspiration Mine division; firemen and oilers of the coarse crusher department; double drum hoist operators of the Live Oak Mine division; crane operators of the tunnel yards; and pumpmen, heating plant operators, roll operators, roll operator helpers, acid plant operators and acid plant operator helpers of the leaching plant. They also agree upon the exclusion of firemen, engineers, brakemen and conductors of the mechanical and railroad departments; boiler foremen and foremen of the power plant; crusher bosses of the coarse crusher department; extraction engineers, shift bosses, haulage bosses of the Inspiration Mine division; shift bosses of the Live Oak Mine division and the Sulphide Tunnel mine area; and crusher foremen, tank house foremen, and tank house shift bosses of the leaching plant. Disagreement exists concerning the following categories of employees.

Operators and Operator Helpers: The Company contends that these classifications are meaningless, whereas both labor organizations

⁵ See *Matter of Struthers Wells Corporation*, 59 N L R B 454.

⁶ See *Matter of Aluminum Company of America*, 61 N L R B 251.

⁷ See *Matter of Link-Belt Spceder Co.*, 37 N L R B 889

⁸ The Field Examiner reported that the A F L and the C. I O submitted 39 and 38 designations, respectively, which "checked on" the Company's pay roll of February 17, 1945, and that there were approximately 125 employees in the appropriate unit. We also note that the contract between the Company and the C. I. O dated November 24, 1943, contained a maintenance of membership provision.

desire their retention as part of the unit description. Inasmuch as the classifications were used in a prior representation case,⁹ the parties having stipulated to their inclusion, we shall specifically include within the unit description operators and operator helpers of the concentrator and slimes-leaching department; operators of the Inspiration Mine division; and operators of the leaching plant.

Hoist House Oilers and Oilers of the Inspiration Mine Division: Both labor organizations desire the inclusion of these employees; however, the position of the Company is not clear from the record.¹⁰ Since the inclusion of these classifications was stipulated in the prior representation proceeding, we shall include them.

Conveyor Tenders and Tripper Men of the Coarse Crusher Department: The A. F. L. seeks the inclusion of conveyor tenders (crusher helpers), in the coarse crusher department, whereas the Company contends that they are semi-skilled workers who should be excluded. In addition, the C. I. O. seeks the inclusion of tripper men engaged in this department, a classification not mentioned by either of the other two parties. The record indicates that conveyor tenders operate the tripper cars over the ore lines and that tripper men regulate the operation of the trippers. Inasmuch as the employees in both classifications operate machinery,¹¹ we shall include them within the unit.

Spreader Operators, Screen Men, Tripper Men and Classifier Operators in the Leaching Plant: The A. F. L. seeks the inclusion of employees engaged in these classifications, the C. I. O. makes no contention with respect to them, and the Company opposes the inclusion of screen men and tripper men on the ground that they are semi-skilled workers. The record indicates that screen men, tripper men and classifier operators operate machinery. Under these circumstances, we shall include them. On the other hand, the record indicates that spreader operators have already been included as part of another collective bargaining unit. Consequently, we shall exclude them.

*Tank House Employees:*¹² The C. I. O. seeks the inclusion of truck men, tank operators, tank helpers, anode washers, mud room bosses, stripper section operators, strippers, sheet punchers, and loop cutters. The A. F. L. agrees to the inclusion of truck men, anode washers, mud room bosses, sheet punchers, and loop cutters, but makes no contention

⁹ See footnote 1, *supra*.

¹⁰ The Company mentioned these classifications in discussing its objections to the units proposed by the labor organizations herein. However, it did not specifically object to their inclusion, but merely confined itself to observing that the oiler and hoist house oiler performed similar duties.

¹¹ The A. F. L. claims jurisdiction over employees who operate machinery.

¹² These are new classifications of employees, which were not discussed in the prior proceeding involving the parties herein. The record indicates that on May 22, 1945, the C. I. O. joined with the Company in filing with the War Labor Board a form 10 application affecting these employees.

with respect to the remaining classifications. The Company contends that none of the employees in any of these classifications should be included within the unit because their work is comparatively unskilled. The record indicates that truck men, mud room bosses, sheet punchers, and loop cutters operate machinery and that employees in the remaining classifications do not. We shall, therefore, include truck men, mud room bosses, sheet punchers, and loop cutters within the unit, but shall exclude therefrom employees in the remaining classifications.

Accordingly, we find that all pumpmen, mill men, mill men helpers, operators and operator helpers of the concentrator and slimes-leaching department, pump operators and oilers of the mechanical and railroad departments; oil transfer men, oilers, and firemen of the power plant; double drum hoist operators, single drum hoist operators, tippelmen, pumpmen, operators, hoist house oilers, and oilers of the Inspiration Mine division; firemen, oilers, conveyor tenders (crusher helpers), and tripper men of the coarse crusher department; double drum hoist operators of the Live Oak Mine division; crane operators of the tunnel yards; pumpmen, heating plant operators, roll operators, roll operator helpers, acid plant operators, acid plant operator helpers, operators, screen men, classifier operators, and tripper men of the leaching plant; and truck men, mud room bosses, sheet punchers, and loop cutters of the tank house, but excluding firemen, engineers, brakemen, and conductors of the mechanical and railroad department; boiler foremen and foremen of the power plant; crusher bosses of the coarse crusher department; extraction engineers, shift bosses, and haulage bosses of the Inspiration Mine division; shift bosses of the Live Oak Mine division and the Sulphide Tunnel Mine area; crusher foremen, tank house working foremen, tank house shift bosses, and the spreader operators of the leaching plant; tank operators, tank helpers, anode washers, stripper section operators, strippers of the tank house, 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.

V. THE DETERMINATION OF REPRESENTATIVES

In support of its motion to dismiss, the C. I. O. pointed to the fact that the Company proposed to change its operations and reduce its personnel. It was anticipated at the hearing, however, that the reduction in personnel would only amount to approximately 43 percent and not be more than one-half the number of employees in the appropriate unit. Moreover, it appears that this reduction has already taken place. In addition, the change in operations will not require the utilization of different classifications of employees. Accordingly, 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.³³

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 Inspiration Consolidated Copper Co., Miami, Arizona, 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 Twenty-first 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 they desire to be represented by International Union of Operating Engineers, Local No. 428, A. F. of L., or by Local Union #586, International Union of Mine, Mill and Smelter Workers, CIO, for the purposes of collective bargaining, or by neither.

³³ Although the C. I. O. intervened as "International Union of Mine, Mill and Smelter Workers, CIO for itself and on behalf of its Local Union #586," we shall only place the local union on the ballot. See *Matter of Utah Copper Co.*, 57 N. L. R. B. 308, and cases cited therein.