

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

*Case No. 4-R-1768.—Decided October 18, 1945*

*Mr. Thomas M. Hyndman*, of Philadelphia, Pa., for the Company.  
*Mr. James Hill*, of Baltimore, Md., for the CIO.  
*Syme and Simons*, by *Mr. Maurice Abrams*, of Philadelphia, Pa.,  
for the A. F. L.  
*Mr. Joseph D. Manders*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

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 Eugene M. Purver, Trial Examiner. The hearing was held at Philadelphia, Pennsylvania on July 25, 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. 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 manufacturing process of smelting copper and brass. Its sole  
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plant, located in Philadelphia, Pennsylvania, is involved in the present proceeding. During 1944 the Company purchased raw materials, consisting principally of copper and brass, valued at approximately \$3,500,000, 50 percent of which was shipped to the Company's plant from points outside the Commonwealth of Pennsylvania. During the same period, the Company manufactured finished products valued at approximately \$4,500,000, 50 percent of which was shipped to points outside the Commonwealth of Pennsylvania.

The Company admits that its operations affect commerce within the meaning of the National Labor Relations Act, and we so find.

#### 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 QUESTION CONCERNING REPRESENTATION

The Company and the AFL entered into a collective bargaining contract on August 1, 1944. The contract provides that it shall remain in effect until August 1, 1945; and continue in effect from year to year thereafter unless and until written notice is given by either party 60 days prior to the termination date. On May 23, 1945, the CIO filed with the Board's Regional Office a petition for certification of representatives, wherein it claimed to represent a majority of the Company's production and maintenance employees. On or about May 23, 1945, the Board's Regional Director notified the Company of the filing of the CIO's petition. In its reply to the Regional Director, the Company stated, in effect, that it declined to recognize the CIO on the ground that its current contract with the AFL operates as a bar to an immediate determination of representatives. However, at the hearing, both the Company and the AFL took a neutral position on the question of whether or not the August 1, 1944, contract operates as a bar.

As noted above, the CIO filed its petition for certification well in advance of the automatic renewal date. Although a more direct notification to the Company of the CIO's claim to representation would have been highly desirable, the Board has customarily held that the filing of a petition prior to the automatic renewal of an existing contract is sufficient to prevent it from operating as a bar to a

representation proceeding.<sup>1</sup> We, therefore, find that the contract of August 1, 1944, does not bar an immediate determination of representatives.<sup>2</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 parties stipulate, and we find, that all production and maintenance employees, excluding outside truck drivers, outside salesmen, laboratory workers, guards and watchmen, office and clerical employees, assistant foremen, foremen, and all or 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 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.<sup>4</sup>

#### 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 White Bros. Smelting Corp., Philadelphia, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty

<sup>1</sup> See *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1336.

<sup>2</sup> Cf. *Matter of White Bros. Smelting Corporation*, 61 N. L. R. B. 340.

<sup>3</sup> The Field Examiner reported that the CIO submitted 166 membership authorization cards, and that the cards were dated in October, November, and December 1944 and January, February, March, and May 1945. Twenty-six cards were undated. There are 202 employees in the proposed unit. The AFL relies upon its current contract as evidence of its interest.

<sup>4</sup> The CIO waived any right it may possess to object to this election because of the charges filed against the Company in *Matter of White Bros. Smelting Corp.*, Case No. 4-C-1503.

(30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 those employees 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 Mine, Mill and Smelter Workers, CIO, or by International Hod Carriers, Building and Common Laborers' Union, Laborers' District Council of Philadelphia, A. F. L., for the purposes of collective bargaining, or by neither.

Mr. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.