In the Matter of UNITED STATES VANADIUM CORPORATION, PINE CREEK UNIT *and* INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, CIO

Case No. 20–R–1580.—Decided May 28, 1946

Mr. Robert M. Mahoney, of Grand Junction, Colo., for the Company.

Messrs. Gladstein, Andersen, Resner, Sawyer, & Edises, by *Mr. Bertram Edises,* of Oakland, Calif., and *Mr. William Gately,* of San Francisco, Calif., for the CIO.

Mr. J. R. Daniels, of Bishop, Calif., for the IWW.

Mr. Herbert J. Nester, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

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 United States Vanadium Corporation, Pine Creek Unit, Bishop, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Aaron, Trial Examiner. The hearing was held at Bishop, California, on March 19, 1946. The Company, the CIO, and Metal Mine Workers Industrial Union, No. 210, of the Industrial Workers of the World, herein called the IWW, appeared and participated.[1] All parties were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the IWW moved to dismiss the petition on the grounds that existing bargaining agreements between the Company and the IWW, covering certain employees at the Company's mine, and be-

[1] Although International Union of Operating Engineers, Local No. 12, A. F. of L., herein called the AFL, was duly served with a copy of the Notice of Hearing, it did not enter an appearance at the hearing and did not participate in the proceedings herein.

tween the Company and the AFL covering certain employees at the mill, constitute a bar to a determination of representatives. The Trial Examiner referred the motion to the Board for ruling. Subsequent to the hearing, the Company also moved to dismiss on similar grounds. For the reasons hereinafter set forth the motions of both the IWW and the Company are denied. 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

I. THE BUSINESS OF THE COMPANY

United States Vanadium Corporation, a wholly owned subsidiary of Union Carbide and Carbon Corporation, is a Delaware corporation, having its principal office in New York City, and is engaged in the development of natural resources and production of various types of metals for industrial use. At its Pine Creek plant located at Bishop, California, the only plant involved in this proceeding, the Company operates a mine and smeltering and refining mill for the production of tungsten, molybdenum, and copper concentrates. During the 6-month period immediately preceding the hearing, the Company received at its Pine Creek plant materials valued in excess of $100,000, more than 50 percent of which originated at points outside the State of California. During the same period, the Company produced products valued in excess of $100,000, more than 75 percent of which was shipped to points outside of the State of California.

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 is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Metal Mine Workers Industrial Union No. 210, is a labor organization affiliated with the Industrial Workers of the World, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Under date of October 23, 1945, the CIO requested recognition from the Company as exclusive bargaining representative of certain employees in both the Company's mine and the smeltering mill. The

Company refused to accord recognition to the CIO until it had been certified by the Board in an appropriate unit. On October 24, 1945, the CIO filed its petition herein.

On June 1, 1943, the Company and IWW entered into a collective bargaining contract covering certain employees in the mine, which provided, in part, as follows:

> This agreement shall become effective immediately upon the authorized signing thereof by the parties and shall continue in effect for six (6) months and shall automatically continue thereafter unless either party notifies the other in writing not less than sixty (60) days prior to the expiration date that a discontinuance or modification is desired.

The Company and IWW contend that this contract has renewed itself semi-annually, pursuant to the above automatic renewal clause, and therefore constitutes a bar to the present proceedings. Assuming, as the Company and the IWW contend, that the contract was automatically renewed on December 1, 1945, for another 6-months' period,[2] it will again be subject to automatic renewal on June 1, 1946 (in the absence of proper notice given prior to April 1, 1946). Inasmuch as the petition herein was filed prior to the automatic renewal date of April 1, 1946, we find that the contract constitutes no bar to a present determination of representatives.

Under date of October 9, 1943, the Company and the AFL entered into a collective bargaining contract covering certain employees of the Company's mill. The contract was for a period of 1 year, and provided that it would automatically continue thereafter for annual periods, unless notice was given in writing not less than sixty (60) days prior to the annual expiration date that either party desired to terminate or modify the contract. On October 22, 1945, after the contract had been automatically renewed pursuant to its terms, and after it had been in effect for approximately 2 weeks of its new term, the Company requested the AFL to enter into negotiations concerning the modification of certain wage rates established by the original contract. As has been stated, the CIO filed its petition 2 days later. Pursuant to the Company's request, the Company and the AFL met in a series of bargaining negotiations beginning October 29, 1945, and as a result thereof, executed a collateral agreement dated November 16, 1945, whereby wage rates for 10 job classifications were changed, and 4 new job classifications and wage rates were established.[3]

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[2] Inasmuch as the petition of the C. I. O. was filed subsequent to October 1, 1945, the automatic renewal date of the contract, it did not operate to remove as a bar, the renewed contract of December 1, 1945 See *Matter of Mill B, Inc., et al*, 40 N L. R. B. 346.

[3] The contract as originally executed provided for 40 job classifications and wage rates therefor.

The Company and the IWW contend that the foregoing contract, as automatically renewed, constitutes a bar to the instant proceeding.[4] The CIO however, contends that the contract was opened by virtue of the subsequent modification thereof, and therefore, cannot operate as a bar.

The Board has held that where a contract provides for modifications during its term, the negotiation or effectuation of such modification by the parties, without attempting to renew or extend the term of the contract, does not operate to open the contract so as to permit the representation claim of a rival union to raise a question concerning representation.[5] Conversely, however, where the parties during the term of the contract attempt to effect modifications which are not provided for therein, or are beyond the scope of the modification clause contained in the contract,[6] the Board will deem the contract to be opened, thus making timely a rival representation claim otherwise prematurely presented in advance of the normal expiration date of the contract. In the instant case, the contract makes no provision for modification during its term; in fact, it expressly provides that "the Company agrees to pay and the Union agrees to accept the wages which shall remain in effect during the life of the contract." We find, therefore, that the CIO's claim of interest and the filing of the petition herein are timely, and that the contract between the Company and the AFL constitutes no bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the units hereinafter found to be appropriate.[7]

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

We find, in accord with the agreement of the parties, the following units to be appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[4] As previously indicated, the A. F. L. did not participate in the proceedings and consequently makes no claim respecting its contract with the Company as a bar to a determination of representatives.

[5] See *Matter of Green Bay Drop Forge Company*, 57 N. L. R. B. 1417; *Matter of Story and Clark Piano Company*, 61 N. L. R. B. 614; also cf. *Matter of Marvel-Schebler Division, Borg Warner Corporation*, 56 N. L. R. B. 105, *Matter of The Ohio River Company (Illinois River Division)*, 66 N. L. R B. 128.

[6] See *Matter of Olin Industries, Inc (Western Cartridge Division, East Alton, Illinois)*, 67 N. L. R. B. 1043.

[7] The Field Examiner reported that the CIO submitted 115 application cards bearing the names of 45 persons appearing on the Company pay roll of November 3, 1945. During the hearing the CIO submitted 27 additional cards, all of which bore names of persons appearing on the Company's pay roll.

There are approximately 115 employees in the appropriate units.

1. All employees of the Company at its Pine Creek plant in the upper and lower mills and at the lower crusher; including operators, welders, welders' helpers, repairmen and oilers of the tram; welders, mechanics, machinists, pipe fitters and oilers at the mill; heavy duty operators and mechanics, repairmen, and oilers on heavy duty equipment; and excepting all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All remaining employees of the Company at its Pine Creek plant, excluding executives, technical workers, clerical workers, foremen and shift bosses, guards, caretakers, and truck drivers and helpers in interstate commerce.[8]

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representatives which has arisen be resolved by elections by secret ballot among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 United States Vanadium Corporation, Pine Creek Unit, of Bishop, California, elections 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 Twentieth 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 employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, 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

[8] The foregoing units are substantially the same as those found to be appropriate in Cases Nos. R-3619 and R-3639, 43 N. L. R. B. 418.

elections, to determine whether or not the employees in Unit I, of Section IV, above, desire to be represented by International Union of Mine, Mill & Smelter Workers, CIO,[9] for the purposes of collective bargaining, and to determine whether or not the employees of Unit II, of Section IV, above, desire to be represented by International Union of Mine, Mill & Smelter Workers, CIO, or by Metal Mine Workers Industrial Union No. 210, IWW, for the purposes of collective bargaining, or by neither.

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

[9] We shall accord the International Union of Operating Engineers, Local No 12, AFL, a place on the ballot in the election for Unit I, which comprises those employees covered by its recent contract, provided that it notifies the Regional Director of the Twentieth Region within five (5) days of the date of this Decision and Directors of Elections, indicating its desire to participate in such election.