

As noted above, the Union contended that the arbitrator's award should be dispositive of the matter. We find merit in the Union's contention that the Board should honor the arbitration award.

In *Raley's*,⁷ the Board stated that in representation cases, as well as unfair labor practice cases, where "a question of contract interpretation is in issue, and the parties thereto have set up in their agreement arbitration machinery for the settlement of disputes arising under the contract, and an award has already been rendered which meets Board requirements applicable to arbitration awards, we think it would further the underlying objectives of the Act to promote industrial peace and stability to give effect thereto. It is true, of course, that under Section 9 of the Act the Board is empowered to decide questions concerning representation. However, this authority to decide questions concerning representation does not preclude the Board in a proper case from considering an arbitration award in determining whether such a question exists."

We are satisfied that the award upon which the Union relies meets the above-mentioned requirements. The arbitration proceeding was conducted pursuant to a provision in the agreement between the Union and Employer. The identical parties who are before the Board presented to the arbitrator the identical issue as to the scope of the contract, and there is no contention that the arbitration proceeding was other than fair and regular and free from any procedural infirmity which might render the award unacceptable.⁸ In his award of April 24, 1964, the arbitrator held that the contract covers the employees in Department 149. We see nothing in the arbitrator's decision that is contrary to the purposes and policies of the Act. In view of the foregoing, we find it will effectuate the policies and purposes of the Act to honor the arbitration award finding that the contract between the Employer and the Union covers the employees in dispute herein, and we shall deny the Employer's motion.

[The Board denied the motion to clarify the certification in Case No. 9-RC-4345.]

⁷ *Raley's Inc., d/b/a Raley's Supermarkets*, 143 NLRB 256.

⁸ The Employer's position is based solely on its disagreement with the arbitrator's conclusion.

Kennecott Copper Corporation, Utah Copper Division and Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen, Petitioners. Case No. 27-RC-2473 and 27-RC-2474. June 30, 1964

DECISION AND DIRECTION OF ELECTIONS

Upon petitions filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hear-
147 NLRB No. 154.

ing Officer Allison E Nutt The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown]

Upon the entire record in this case the Board finds

1 The Employer, Kennecott Copper Corporation, Utah Copper Division, is engaged in commerce within the meaning of the Act

2 The labor organizations named below claim to represent certain employees of the Employer ¹

3 A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act

In Case No 27-RC-2473, the Petitioner, Order of Railway Conductors and Brakemen, seeks a unit of

All conductors, brakemen, enginemen, engine foremen and switchmen engaged in the Company's rail transportation between the Copperton Yard to and within the Magna Switching District, which is defined as follows 2,000 feet above Arthur Junction, Riter on the Denver & Rio Grande Western Railroad tracks, Garfield Smelter, Utah Refinery, Central Warehouse trackage, Sands Spur, Western Pacific Railroad and Union Pacific transfer tracks, and to exclude all other employees, guards and supervisors as defined in the Act

In Case No 27-RC-2474, the Petitioner, Brotherhood of Locomotive Firemen and Enginemen, seeks a unit of

All engineers, firemen or helpers, hostlers and hostlers' helpers engaged in the Company's rail transportation between the Copperton Yard to and within the Magna Switching District which is defined as follows 2,000 feet above Arthur Junction, Riter on the Denver & Rio Grande Western Railroad tracks, Garfield Smelter, Utah Refinery, Central Warehouse trackage, Sands Spur, Western Pacific Railroad and Union Pacific transfer tracks, and to exclude all other employees, guards and supervisors as defined in the Act

The Employer takes the position that the units sought by the respective Petitioners are appropriate

The Intervenor, however, contends that the inclusion of Central Warehouse trackage is inappropriate since the operation of trains over said trackage is now part of its contractual unit ²

Except for the inclusion of Sands Spur and Central Warehouse trackage, the unit descriptions as set forth above have for many years represented the scope and composition of the contract units of the

¹ United Steelworkers of America, AFL-CIO was allowed to intervene on the basis of an asserted contractual interest

² The Intervenor does not desire to be placed on the ballot in the event the Board orders an election

respective Petitioners. Intervenor, on the other hand, is at present recognized under an existing collective-bargaining agreement, as the exclusive representative of all production and maintenance employees working at the smelter. It is undisputed that among the employees within the unit represented by the Intervenor are employees who operated trains servicing a warehouse and other facilities within the confines of the smelter yard.

4. The Employer operate a large facility for the recovery and refining of copper. The facility includes a mine, two concentrating plants, a smelter, and an electrolytic refinery as well as a powerplant and a railroad operation. The railroad operation which is commonly known as the "ore haulage" plant or system is the subject of the instant petitions.

Essentially, the ore haulage plant or system consists of a main track about 20 miles long connecting the various manufacturing operations required to produce pure copper. At the mine, ore-laden cars are assembled and then delivered to the concentrators for the initial step in the refining process. At the concentrators the ore is reduced to a product known as concentrate which is transported by train to the smelter. At the smelter the concentrate is processed into copper anodes and then moved by train to the refinery where the finished pure copper product is produced. From the refinery the copper moves into interstate commerce.

The ore haulage system is used not only to ship the copper product from one refining operation to the next, but also to make deliveries of other materials and supplies to the concentrators, smelter, and refinery. Prior to May 1963 each of these operations was serviced by its own warehouse. Deliveries to these warehouses were made by trains operating on the ore-haulage system. Except for material destined for the smelter and smelter warehouse, employees represented by Petitioners operated the trains. At the smelter, unlike the other facilities, the operation of the trains was turned over to smelter yard employees, who were represented by the Intervenor. Thus, at the smelter yard limit employees operating the trains, who were represented by the Petitioners, would surrender the train to a crew from the smelter yard, who would then operate the train on the trackage within the smelter yard. Ultimately the trains would be returned either empty or with products destined for shipment to other points to the smelter yard limit where the trains would be returned to employees represented by the Petitioners.

In May 1963, the Employer, for economic reasons, abandoned the system of operating a warehouse at each facility, and began using two newly erected centrally located warehouses, each to serve two facilities. One of the new warehouses was known as Central Warehouse and serviced both the smelter and the refinery. Commencing in May 1963,

products formerly stored at the smelter yard warehouse were stored at the Central Warehouse. In addition, products used exclusively by the refinery, which at no time had been stored in the smelter warehouse, were also stored in Central Warehouse.

Rail access to the Central Warehouse was provided by means of a new spur known as the Central Warehouse trackage, which in turn ran off a new spur known as Sands Spur. Neither the Sands Spur nor the Central Warehouse trackage connected directly to the trackage within the smelter yard, but only with the main track of the ore-haulage system. Unlike the situation which prevailed with respect to the smelter yard warehouse, no terminal switching point existed within the smelter yard between the main track and the Central Warehouse. Trains carrying materials from the main track and over the Sands spur and Central Warehouse trackage continued to the Central Warehouse under the control of their original crews.

As indicated, Intervenor's opposition to the Petitioners' unit requests stems from a belief that the employees who operate trains to the Central Warehouse are performing work which under the terms of the Intervenor's contract with the Employer is essentially part of smelter unit work.³ While it is true that employees represented by the Intervenor, and covered by the existing collective-bargaining agreement, formerly operated trains which made deliveries to the smelter yard warehouse, it is clear that these operations were over trackage not considered part of the ore-haulage system. The ore-haulage system was so constructed that it did not extend beyond the smelter yard limit. Thus, there was a clear differentiation between the trackage serving the plant in general and that serving the smelter yard and its related facilities.⁴ However, the Central Warehouse trackage and the Sands Spur from which the Central Warehouse trackage originates is simply an extension of the main ore-haulage system. No terminal point exists where the Central Warehouse trackage enters the smelter yard area; no switching facilities exist at that point, and there is nothing in the record indicating that the haulage of materials and supplies to the Central Warehouse requires skills associated with the operations of the smelter.

Although the Central Warehouse trackage is new, in its use and location it is simply an undifferentiated extension of the trackage of the ore-haulage system. The fact that the warehouse served by this new trackage includes operations formerly performed in the smelter

³ When Central Warehouse became operative on May 1, 1963, the Intervenor asserted its claim that its contract with the Employer applied to employees operating trains to Central Warehouse. The Employer, however, rejected the Intervenor's claim and assigned the work to employees represented by the Petitioners.

⁴ Apparently smelter train crews still operate trains within the smelter yard area for all purposes connected with the operation of the smelter other than the hauling of materials to the Central Warehouse.

yard warehouse does not, in our opinion, affect the operational integration of the new trackage into the ore-haulage system. Further, it is undisputed that the employees operating trains over the ore-haulage system, excluding this new trackage, are part of the Petitioners' respective units, it is undisputed that the Intervenor's contract unit does not include such employees, and it is clear that the employees who operate the trains on the Central Warehouse trackage are the very employees who operate the trains on the balance of the ore-haulage system. In all these circumstances, we find that the Central Warehouse trackage is within the scope of the Petitioners' historic units, and that employees operating trains on such trackage are included in such units.

In view of the foregoing, we find that the following units are appropriate for collective bargaining within the meaning of Section 9(b) of the Act

In Case No 27-RC-2473

All conductors, brakemen, enginemen, engine foremen, and switchmen engaged in the Company's rail transportation between the Copperton Yard to and within the Magna Switching District, which is defined as follows 2,000 feet above Arthur Junction, Riter on the Denver & Rio Grande Western Railroad tracks, Garfield Smelter, Utah Refinery, Central Warehouse trackage, Sands Spur, Western Pacific Railroad and Union Pacific transfer tracks, and to exclude all other employees, guards, and supervisors as defined in the Act

In Case No 27-RC-2474

All engineers, firemen or helpers, hostlers and hostlers' helpers engaged in the Company's rail transportation between the Copperton Yard to and within the Magna Switching District which is defined as follows 2,000 feet above Arthur Junction, Riter on the Denver & Rio Grande Western Railroad tracks, Garfield Smelter, Utah Refinery, Central Warehouse trackage, Sands Spur, Western Pacific Railroad and Union Pacific transfer tracks, and to exclude all other employees, guards, and supervisors as defined in the Act

Although the units herein found appropriate, except for Sands Spur and Central Warehouse trackage, are the same units for which the Petitioners are currently recognized, the Petitioners assert that they seek the benefits arising from Board certification, and desire to proceed to an election.⁵ We shall, therefore, direct elections in the respective units. As the Intervenor has indicated that in such event it does not wish to participate in an election, we shall not place its name on the ballot.

[Text of Direction of Elections omitted from publication]

⁵ See *General Box Company*, 82 NLRB 678