

In the Matter of TENNESSEE-SCHUYLKILL CORPORATION and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL No. 384

Case No. R-460.—Decided February 4, 1938

Mining and Milling Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize and bargain with petitioning union as exclusive representative—Unit Appropriate for Collective Bargaining: production employees; no controversy as to—Election Ordered

Mr. David Sokol, for the Board.

Mr. Carl G. Krook, of Kingman, Ariz., for the Company.

Mr. James R. Lord and Mr. Walter Goodwin, of Jerome, Ariz., for the Union.

Mr. D. R. Dimick, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 2, 1937, International Union of Mine, Mill and Smelter Workers, Local No. 384, herein called the Union, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Tennessee Mine, Chloride, Arizona, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. 49 Stat. 449, herein called the Act. On October 15, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On November 22, 1937, the Union filed an amended petition substituting the Tennessee-Schuykill Corporation, Chloride, Arizona, herein called the Company, for the Tennessee Mine.

On November 22, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Union,

the Central Labor Council of Phoenix, Arizona, the Central Labor Council of Los Angeles, California, and upon the Los Angeles Industrial Union Council, of Los Angeles, California. Pursuant to the notice, a hearing was held on November 29, 1937, at Kingman, Arizona, before Dwight W. Stephenson, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, and the Union by the International Representative and District Organizer for the International Union of Mine, Mill and Smelter Workers. All participated in the hearing. The other organizations who were served with notices of the hearing did not appear or participate in the proceeding. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Company filed a plea to the jurisdiction of the Board. The Trial Examiner held that the plea was in substance a motion by the Company to dismiss the proceedings for lack of jurisdiction and denied the same. The Trial Examiner also made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Delaware corporation, owns and operates a mine at Chloride, Arizona, and in conjunction with the mine owns and operates a mill for the purpose of reducing the ore obtained at its mine to concentrates. The concentrates are loaded on trucks at the mill, which is located at Chloride, and trucked to Kingman, Arizona, where they are placed on board railroad cars operated by the Santa Fe Railroad.

The Company produces chiefly lead and zinc concentrates, although there is to be found in these concentrates gold, silver and iron. The American Smelting and Refining Company purchases all of the concentrates milled by the Company. The lead and zinc concentrates are, respectively, shipped to the purchaser's smelters at El Paso, Texas, and at Amarillo, Texas. One hundred per cent of the output of the Company's mine and mill is, therefore, shipped outside Arizona.

The mine operated by the Company is one of the largest mines in the vicinity of Chloride, Arizona, and is to be found in a district that is devoted largely to mining and grazing. From the start of its operations, in September 1936, to the end of December 1936, the Company sold 638 tons of lead at a gross value of \$42,091.93; 477 tons of

zinc at a gross value of \$38,174.90; 377 pounds of copper at a gross value of \$15.66; and 369 tons of iron at a gross value of \$3,890.88. From January 1 to September 30, 1937, the Company sold 1,966 tons of lead at a gross value of \$161,929.00; 1,288 tons of zinc at a gross value of \$144,675.27; and 1,273 tons of iron at a gross value of \$12,844.81. In addition to lead, zinc, copper and iron, the Company also sold an appreciable amount of gold and silver.

II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill and Smelter Workers, Local No. 384, which received its charter from International Union of Mine, Mill and Smelter Workers about June 16, 1937, is a labor organization, admitting to its membership all men working in and around a mine, mill or smelter, excluding office workers, clerical and supervisory employees, jiggers, and shift bosses.

III. THE QUESTION CONCERNING REPRESENTATION

On August 25, 1937, the International Union of Mine, Mill and Smelter Workers sent a letter ¹ to the Company stating that the Union had been chosen by approximately 75 per cent of the Company's employees as their collective bargaining representative, and asking that the Company reply within five days advising where specified representatives of the Union could meet with the officials of the Company to discuss an agreement as to hours, wages and working conditions. The letter stated that the specified representatives were employees of the Company and were bona fide members of the Union.

The Company, by a letter ² of August 28, 1937, replied that the Union and the International Union of Mine, Mill and Smelter Workers were unknown to the Company and that the Company could see no reason to meet with the specified or any other representatives. The letter added that the Company was always willing to discuss working conditions with any of its employees.

We find that a question has arisen concerning the representation of the employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

¹ Board Exhibit 3 (a).

² Board Exhibit 3 (b).

tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Union alleges in its petition that the production workers of the Company at its Chloride, Arizona, mine and mill constitute an appropriate bargaining unit. The Union does not admit to its membership office workers, clerical and supervisory employees, jiggers and shift bosses, and the record shows that the Union desires to exclude such employees from the bargaining unit. The Company raised no objection to the unit asked for by the Union.

We find that the production employees of the Company, excluding office workers, clerical and supervisory employees, jiggers, and shift bosses, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The record shows that on August 2, 1937, the date of the filing of the original petition, the Company employed 121 persons within the unit which we have found appropriate. On December 3, 1937, counsel for the Company and counsel for the Board stipulated that on November 29, 1937, the date of the hearing, the Company had in its employ 141 employees excluding office workers, supervisors, jiggers, shift bosses, the mine superintendent, together with any other persons who have the right to hire or fire.³ Walter Goodwin, a union organizer, testified at the hearing that 67 employees of the Company were on August 2, 1937, members of the Union and the implication is that all such employees were within the appropriate unit. Although the Union application cards were not introduced in evidence, the record shows that Goodwin had such cards with him, that he testified from an inspection of them, and that the cards were thereafter handed to the Trial Examiner. Goodwin also testified that additional employees joined the Union after August 2. According to the Trial Examiner's account there were 78 application cards. Although Goodwin testified that all persons whose names appeared on the cards were members of the Union, no pay roll of the Company was introduced into evidence and the record discloses no comparison at any time of the cards and any pay roll of the Company. We feel, therefore, that no adequate showing has been made that the Union represents a majority of the employees of the Company within the appropriate unit.

³ Board Exhibit 5. It does not appear the Union consented to the inclusion of the exhibit as part of the record.

We find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot. Eligibility to vote in the election will be extended to the employees within the appropriate unit who were in the employ of the Company during the pay-roll period immediately preceding November 22, 1937, exclusive of those who have voluntarily quit or have been discharged for cause between that period and the date of the election.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Tennessee-Schuylkill Corporation, Chloride, Arizona, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of Tennessee-Schuylkill Corporation, excluding office workers, clerical and supervisory employees, jiggers, and shift bosses, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Tennessee-Schuylkill Corporation, Chloride, Arizona, an election by secret ballot shall be conducted within twenty (20) 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, Section 9, of said Rules and Regulations, among the production employees of said Corporation, exclusive of office workers, clerical and supervisory employees, jiggers, and shift bosses, who were in the employ of the Corporation during the pay-roll period immediately preceding November 22, 1937, excluding those who have voluntarily quit or have been discharged for cause between that period and the date of the election, to determine whether or not they desire to be represented, for the purposes of collective bargaining, by International Union of Mine, Mill and Smelter Workers, Local No. 384.