

In the Matter of TENNESSEE COPPER COMPANY and A. F. OF L. FEDERAL  
UNION No. 21164

*Case No. R-574.—Decided March 3, 1938*

*Mining and Milling Industry—Investigation of Representatives:* controversy concerning representation of employees: rival unions; controversy as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* all employees, except clerical and supervisory employees, chemists, and technical engineers, in mines and mills operated by employer at three communities situated close together; history of collective bargaining with employer; functional coherence; organization of business; community of interest; interchangeability of employees—*Election Ordered*

*Mr. Maurice J. Nicoson*, for the Board.

*Frantz, McConnell, & Seymour*, of Knoxville, Tenn., for the Company.

*Mr. George L. Googe*, of Atlanta, Ga., for the A. F. of L.

*Mr. Reid Robinson*, of Denver, Colo., and *Mr. Robert P. Brown*, for the International.

*Mr. Richard A. Perkins*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 19, 1937, American Federation of Labor, Federal Union No. 21164,<sup>1</sup> herein called the A. F. of L., filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Tennessee Copper Company, Copperhill, Tennessee, herein called the Company, 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 December 10, 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

<sup>1</sup> The petition was filed by George L. Googe, Southern Representative, American Federation of Labor.

authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On December 22, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the A. F. of L., and upon International Union of Mine, Mill, and Smelter Workers, herein called the International, a labor organization claiming to represent employees directly affected by the investigation. On December 27, 1937, the Regional Director issued an amended notice of hearing, copies of which were duly served upon the same parties. Pursuant to the amended notice, a hearing was held on January 13 and 14, 1938, at Chattanooga, Tennessee, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board, the Company, and the International were represented by counsel, and the A. F. of L. by one of its officials. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed 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

Tennessee Copper Company, a New Jersey corporation, mines ore containing copper and other metals and produces pig copper and various byproducts at its mines and processing plants in Polk County, Tennessee. The ore is broken up and transported to flotation and sintering plants and to the smelter. The flotation plants extract copper, iron, zinc, and sulphur from the ore. The smelter extracts copper. The sintering plants produce a high-grade iron ore known as iron sinter. Acid plants produce sulphuric acid as a byproduct. Copper sulphate is another byproduct.

The Company's operations center about three communities, Copperhill, Ducktown, and Isabella. These three settlements describe an isosceles triangle with its apex at Copperhill on the south. Isabella and Ducktown are about one and one-half miles apart and are each about four miles from Copperhill.

At Copperhill are the general offices of the Company, railroad shops serving the Company's private railroad connecting the three communities, a chemical laboratory, mechanical and carpenter shops, blast furnaces, a slag plant, copper converters, roasters, a sintering plant, acid plants, a company store, and a hospital.

The headquarters of the Company's mining operations is at Ducktown, which also has a company store and a hospital. Burra Burra, McPherson, and London mines are near Ducktown. The Company operates a flotation plant at London mine but does not now carry on mining operations there.

At Isabella there are a flotation plant, a sintering plant, roasters, acid plants, a company store, and a hospital. Near Isabella are the Isabella and Eureka mines. These mines are connected with Burra Burra mine, which includes McPherson mine, and all are conducted as a single operation.

The Company employs 718 persons at Copperhill, 411 at Ducktown, and 225 at Isabella. The total annual pay roll is about \$2,000,000.

About half of the supplies used by the Company, amounting to approximately \$50,000 each month, are purchased outside Tennessee, and include dynamite, fuse, and other materials. The Company produces annually about 12,000,000 pounds of pig copper, which is shipped to a refinery in New York City and after refining is sold in the market generally, both domestic and foreign. The annual output of sulphuric acid is approximately 425,000 tons, 63 per cent of which is sold outside Tennessee in 10 States. The Company's annual production of iron sinter is 180,000 tons. Of this total, 85 per cent is shipped to Alabama and 10 per cent to Ohio. About 10,000,000 pounds of copper sulphate is manufactured yearly and sent to practically every State. The Company's entire output of zinc concentrates, amounting to 3,500 tons annually, is shipped to Pennsylvania.

## II. THE ORGANIZATIONS INVOLVED

American Federation of Labor, Federal Union No. 21,164, is a labor organization which admits to membership employees of the Company.

International Union of Mine, Mill, and Smelter Workers is a labor organization which has chartered Locals 183 and 184. Local 183, known as the Ducktown local, admits to its membership employees of the Company who work at Eureka, Isabella, and Burra Burra mines and the flotation plant at London Mine, and the railroad section gang stationed at the north end of the Company's railroad, near Ducktown. Local 184, known as the Isabella local, admits employees of the Company who work at the "plant, power plant and shop around Isabella."

## III. THE QUESTION CONCERNING REPRESENTATION

On November 16, 1936, the Company executed three separate contracts negotiated jointly by International Locals 183 and 184 and by International Local 176, which then represented employees at

Copperhill. In August 1937 a majority of those who attended a meeting of the Copperhill local voted to renounce their International charter and affiliate with the A. F. of L., which accordingly issued them a charter as Federal Union No. 21,164.<sup>2</sup> About 30 days prior to the expiration of the contracts on November 16, 1937, Federal Union No. 21,164, acting independently, gave the Company notice of its intention to propose a new contract. On November 15, 1937, representatives of International Locals 183 and 184 applied to the Company for a renewal of their contracts and were informed of the previous action taken by the A. F. of L. The Company was reluctant to negotiate because of the doubts raised by the action of the Copperhill employees. The representatives of the International locals decided to postpone negotiations until the matter could be settled. At the time the petition was filed all three contracts had expired and none had been renewed.

We find that a question has arisen concerning representation of 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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The A. F. of L. contends that a unit composed of all the employees of the Company, except supervisory employees, in the area including Copperhill, Isabella, and Ducktown and the mines, plants and facilities pertaining to each, hereinafter called the Ducktown basin, as it is locally known, is appropriate for the purposes of collective bargaining. The International insists that three units, corresponding to the locals which it originally chartered in the basin, are appropriate, and further contends that not only supervisory employees but also clerical employees, chemists, and technical engineers should be excluded.

In 1916 the International, then affiliated with the A. F. of L., chartered Locals 176 and 183 for employees of the Company at Copperhill and Ducktown respectively, and Local 184 for employees of Ducktown Chemical & Iron Company, which then owned the mines

<sup>2</sup> International Local 176 apparently went out of existence

and plants at Isabella.<sup>3</sup> Soon after the World War the membership of these locals declined to practically nothing and the locals became inactive, although the International took no action to revoke their charters. In 1933 there was a renewal of union activity in the basin and the locals were revived. In 1934 the Copperhill and Ducktown locals, acting jointly, negotiated an oral agreement with the Company. In 1935 the same two locals secured separate written contracts with the Company as a result of joint negotiations.<sup>4</sup>

On November 16, 1936, the International locals at Copperhill, Ducktown, and Isabella after a joint conference executed contracts with the Company, as set forth in Section III above. These contracts and the prior contracts between the Company and the locals were to be in force for one year and were identical except for the designation of the respective locals contracting with the Company and the signatures of their officers.

The evidence indicates a high degree of interdependence and division of labor among the several mines and plants operated by the Company in the Ducktown basin, as described in Section I above. Ore from all the mines is hauled to the Company's only smelter at Copperhill. There is a floating crew of about 150 men who do repairs and perform various services at all the plants and mines, although they keep their tools at Copperhill and are assigned to that location for administrative purposes. The Company observes a seniority rule, the application of which is basin-wide and is not limited to personnel at any single location. There is some transfer of employees among the several locations.

The three communities in the basin are likewise closely related. Copperhill, an incorporated town, has a population of 6,000, including those just outside the corporate limits. The other two settlements are unincorporated. Ducktown has 1,500 inhabitants and Isabella 600. The entire basin constitutes a single judicial district of Polk County, with a courthouse at Ducktown. There is a community center at Ducktown, which is used by residents of both Ducktown and Isabella. A high school near Ducktown serves both Ducktown and Isabella. All the land between the three communities is owned or leased by the Company.

Witnesses for both the A. F. of L. and the International testified at the hearing that prior to the fall of 1937 all agreements with the Company had been reached as a result of joint action of the locals in the Ducktown basin. Witnesses for the International admitted

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<sup>3</sup> On August 31, 1936, the Company acquired the Isabella properties of Ducktown Chemical & Iron Company

<sup>4</sup> At about this time the governing body of the International took action at an annual convention to affiliate with the Committee for Industrial Organization. This change in affiliation had no immediate effect on the locals in the Ducktown basin

that it would not be practical to have two rival unions attempting to represent employees in the basin.<sup>5</sup> The Company stated that it had no preference as to which union it dealt with but that it would naturally prefer to deal with a single union. Upon all the evidence it is an inescapable conclusion that a basin-wide unit is appropriate, if employees are to bargain in an effective and orderly manner.<sup>6</sup> Attempted bargaining by any less inclusive unit would lead to confusion. The International stresses the necessity for separate machinery at each location to handle grievances and other local business. Such an arrangement, however, is perfectly consistent with the existence of a single bargaining unit in the basin.

With respect to the classes of employees to be excluded from the unit here considered, the record discloses little more than the preferences of the rival unions. As above stated, both unions agree on the exclusion of supervisory employees. The International also claims that clerical workers, chemists, and technical engineers should be excluded. No reason appears why these persons should be included in the unit under consideration. We have heretofore held that because of their special interests, clerical employees, engineers,<sup>7</sup> and chemists<sup>8</sup> are prima facie unsuitable for inclusion in a unit with production employees. We shall accordingly exclude clerical workers, chemists, and technical engineers, as well as supervisory employees.

We find that all employees of the Company in the Ducktown basin, excluding clerical and supervisory employees, chemists and technical engineers, 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

At the hearing the International produced 601 cards purporting to bear the signatures of employees accepting membership in the International and authorizing that organization to bargain for them.

These cards were circulated after November 22, 1937, and are distributed as follows: Copperhill, 54; Ducktown, 345; and Isabella, 202. The International requested that it be certified as the representative of the workers at Ducktown and Isabella, but our determination of the unit appropriate for collective bargaining renders such

<sup>5</sup> A. F. Johnson, p. 157; C. L. Pegues, p. 195.

<sup>6</sup> See *In the Matter of American Woolen Company, Nat'l and Providence Mills, and Independent Textile Union of Olneyville*, 5 N. L. R. B. 144, decided February 8, 1938.

<sup>7</sup> *In the Matter of R. C. A. Manufacturing Company, Inc. and United Electrical and Radio Workers of America*, 2 N. L. R. B. 159.

<sup>8</sup> *In the Matter of Southern Chemical Cotton Company and Textile Workers Organizing Committee*, 3 N. L. R. B. 869.

a certification impossible. Further, the A. F. of L. produced a petition purporting to bear the signatures of 63 International members at Ducktown and Isabella, requesting the Board to hold an election in the basin. Some of the signatures appearing on both the cards and the petition seem to be in different handwriting, but the record affords us no standard for comparison. The A. F. of L. claims 477 members, and 25 or 30 applications not yet acted upon, but furnishes no supporting evidence.

We find that the question which has arisen concerning the representation of employees can best be resolved by holding an election by secret ballot. All parties stipulated that the pay roll of the Company as of November 19, 1937, was acceptable for determining eligibility to vote in the event of an election. We shall adopt this eligibility date.

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 Copper Company, Copperhill, Tennessee, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company in the Ducktown basin, excluding clerical and supervisory employees, chemists, and technical engineers, 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, 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 its investigation to ascertain representatives for the purposes of collective bargaining with Tennessee Copper Company, Copperhill, Tennessee, 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 Tenth Region, acting in this matter as the agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations—Series 1, as amended, among all the employees of the Company in the Ducktown basin who were on the pay roll on November 19, 1937, excluding clerical and supervisory employees, chemists, and technical engineers, and those who have since quit or

been discharged for cause, to determine whether they desire to be represented by American Federation of Labor, Federal Union No. 21,164, or International Union of Mine, Mill, and Smelter Workers for the purposes of collective bargaining, or by neither.

[SAME TITLE]

## SUPPLEMENTAL DECISION

AND

### AMENDMENT TO DIRECTION OF ELECTION

*March 15, 1938*

On March 3, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled matter.

The American Federation of Labor, by letter dated March 12, 1938, has requested that the Direction of Election be amended so as to alter the designation of the parties to the ballot, and to omit the words "or by neither".

We shall grant the request of the American Federation of Labor to substitute its name for that of American Federation of Labor Federal Union No. 21164. The requests for a change in the designation of International Union of Mine, Mill, and Smelter Workers and for the omission of the phrase "or by neither"<sup>1</sup> are without merit, and they are hereby denied.

The Board hereby amends its Direction of Election by striking therefrom the words and figures "Federal Union No. 21164."

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<sup>1</sup> *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657, 4 N. L. R. B. 55.*