

In the Matter of ATOLIA MINING CO. and FEDERAL LABOR UNION,
LOCAL 21,464, A. F. OF L.

Case No. R-737.—Decided June 18, 1938

Tungsten Mining and Milling Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal of employer to recognize either organization until question of representation determined—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding clerical employees and employees having the power to hire or discharge; no controversy as to—*Election Ordered:* refusal to delay election on basis of alleged unfair labor practices where complaining union had withdrawn charges previously filed and refused to file new charges; union granted 10 days' leave to apply for removal of name from ballot, where desire to participate not clear.

Mr. Charles M. Brooks, for the Board.

Gibson, Dunn & Crutcher, of Los Angeles, Calif., by *Mr. J. Stuart Neary* and *Mr. Henry B. Ely*, for the Company.

Mr. A. H. Petersen, of Los Angeles, Calif., for the Federal.

Mr. Ed Sugar and *Mr. William Gately*, of Los Angeles, Calif., for the International.

Mr. Bernard W. Freund, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 26, 1938, Federal Labor Union, Local 21,464, A. F. of L., herein called the Federal, 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 Atolia Mining Company,¹ Atolia, California, 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 April 26, 1938, the National Labor Relations Board, herein

¹ Incorrectly designated in the petition as Atolia Mining Co.

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 May 3, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Federal, and International Union of Mine, Mill and Smelter Workers, herein called the International, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on May 12 and 13, 1938, at Los Angeles, California, before Martin Raphael, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the Federal by an American Federation of Labor organizer, and the International by duly authorized representatives. All participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The representatives of the Federal and of the International did not, however, appear on the second day of the hearing. During the course of the hearing the Trial Examiner made rulings on motions and on an objection to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board hereby denies all motions and overrules all objections to the admission of evidence which were not ruled upon by the Trial Examiner.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Atolia Mining Company is a California corporation, owning approximately 300 acres of mining property at Atolia, California. It employs about 30 men in the operation of a mill in which tungsten ores, extracted from the Company's mining property by approximately 240 individual lessees, are reduced to scheelite concentrates. The Company is the second largest producer of scheelite concentrates in the United States.

The Company's entire production, amounting to 299.33 tons and to \$416,357.56 in value in 1937, is shipped outside the State of California, principally to Pennsylvania and New York. Substantially all the materials used in producing the concentrates are purchased within the State of California.

II. THE ORGANIZATION INVOLVED

Federal Labor Union, Local 21,464, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all employees of the Company, except those having the power to hire or discharge.

International Union of Mine, Mill and Smelter Workers is a labor organization affiliated with the Committee for Industrial Organization. Local 421 of the International apparently admits to its membership employees of the Company. It was stated at the hearing by the International's representative that Local 421 will amalgamate with another local of the International with headquarters about 40 miles from Atolia, California.

III. THE QUESTION CONCERNING REPRESENTATION

In its petition the Federal alleged that the Company refused to grant it recognition because of membership claims made by the International. At the hearing the representative of the Federal testified in substance that the Company will not bargain collectively with any labor organization until it is certified by the Board as the exclusive bargaining agency of the Company's employees. Counsel for the Company stated that the Company has no objection to the holding of an election by the Board and stipulated to the holding of such an election.

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 Federal contended that the appropriate unit should include the production and maintenance employees of the Company, excluding clerical employees and employees having the power to hire or discharge. No objection to such a unit was made by the Company or the International. We see no reason for deviating from the unit claimed by the Federal.

We find that production and maintenance employees of the Company, excluding clerical employees and employees having the power to hire or discharge, 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 representative of the Federal testified that it represented every employee in the appropriate unit, but no other evidence in support of this claim was produced. The International stated that it was "quite possible" that employees in the appropriate unit are members of the International. We find that an election by secret ballot is necessary to resolve the question concerning representation.

The International contended that no election should be conducted by the Board at this time. In support of this contention, the International asserted that the effects of unfair labor practices allegedly engaged in by the Company, directed against the International, had not been dissipated, and that the membership and officers of the Federal at the time it was installed by the American Federation of Labor among employees of the Company on January 24 or 26, 1938, were identical with the membership and officers of an allegedly company-dominated labor organization with which the Company on January 6, 1938, had agreed to cease dealing. It was further asserted by the International that it had withdrawn charges against the Company previously filed by it with the Board, setting forth the alleged unfair labor practices, and was not in a position to renew those charges, for the reason that its members, who could testify as to the unfair labor practices, had either been forced to leave the vicinity of Atolia, California, because of those practices, or feared to testify because of the discrimination against them that might result, and consequently the charges could not be substantiated at this time. The International requested that the holding of the election be delayed, so that the International could, on its own initiative, take steps to dissipate the effects of the alleged unfair labor practices.

The charges against the Company to which the International referred were filed by the International with the Regional Director on March 17, 1938. A request by the International on April 5, 1938, for permission to withdraw the charges was granted by the Regional Director on April 19, 1938, after a field investigation of the alleged unfair labor practices had been made by a representative of the Board. Under these circumstances, and in view of the International's

refusal to renew its charges formally, the International's request that the holding of the election be delayed is hereby denied.

The Federal requested that March 26, 1938, the date of the filing of the petition herein, be used as the pay-roll date for determining eligibility to participate in the election. No opposition to this request was expressed by the Company or the International. Accordingly, we will provide that employees of the Company in the appropriate unit employed during the pay-roll period including March 26, 1938, will be eligible to participate in the election.

In our Direction of Election we will provide for participation in the election by both the Federal and the International. Since it is not clear from the record whether the International desires to participate, the Board hereby grants to the International 10 days' leave from the date of issuance of the Direction to file with the Board a request that its name be not placed on the ballot. Upon such filing, the Direction of Election will be amended to provide for participation in the election only by the Federal.

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 Atolia Mining Company, Atolia, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. The production and maintenance employees of the Company, excluding clerical employees and employees having the power to hire or discharge, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the 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 a part of the investigation ordered by the Board to ascertain representatives for collective bargaining with Atolia Mining Company, Atolia, California, 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 and maintenance employees of Atolia Mining Company who were employed by it during the pay-roll period including March 26, 1938, excluding clerical employees and employees having the power to hire or discharge, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by Federal Labor Union, Local 21,464, affiliated with the American Federation of Labor, or by International Union of Mine, Mill and Smelter Workers, affiliated with the Committee for Industrial Organization, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

June 27, 1938

On June 18, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, directing the conduct of an election among employees of Atolia Mining Company, Atolia, California, to determine whether they desire to be represented by Federal Labor Union, Local 21,464, affiliated with the American Federation of Labor, or by International Union of Mine, Mill and Smelter Workers, affiliated with the Committee for Industrial Organization, or by neither.

In our Decision we granted to the International Union of Mine, Mill and Smelter Workers 10 days' leave to file with the Board a request that its name be not placed on the ballot, and stated that, upon such filing, the Direction of Election would be amended to provide for participation in the election only by Federal Labor Union, Local 21,464. On June 23, 1938, the International Union of Mine, Mill and Smelter Workers filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a request that its name be omitted from the ballot and that the Direction of Election be amended accordingly.

The Board hereby amends the Direction of Election issued on June 18, 1938, by striking therefrom the words "to determine whether they desire to be represented by Federal Labor Union, Local 21,464, affiliated with the American Federation of Labor, or by International Union of Mine, Mill and Smelter Workers, affiliated with the Committee for Industrial Organization, or by neither," and substituting therefor the words "to determine whether or not they desire to be represented by Federal Labor Union, Local 21,464, affiliated with the American Federation of Labor, for the purposes of collective bargaining."