

In the Matter of PAUL LIME PLANT and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CIO), FOR ITSELF AND ON BEHALF OF ITS LOCAL #470

*Case No. 21-R-2053.—Decided October 23, 1943*

*Mr. James T. Gentry, of Bisbee, Ariz., and Miss Helen M. Smith, of Douglas, Ariz., for the Company.*

*Messrs. Orville Larson and Glenn Freeman, of Clifton, Ariz., for the Union.*

*Mr. Glenn L. Moller, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Mine, Mill and Smelter Workers (CIO), for itself and on behalf of its Local #470, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Paul Lime Plant, Paul Spur, Arizona, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William B. Esterman, Trial Examiner. Said hearing was held at Douglas, Arizona, on September 13, 1943. The Company and the Union appeared, participated, were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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

Paul Lime Plant is a copartnership of Alfred Paul, Mabel W. Paul, Alfred Paul, Jr., and Winifred Paul Ames, operating and doing busi-

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ness at Paul Spur, Arizona, under the name Paul Lime Plant. The Company's entire operations, the production and sale of lime, crushed rock, silica, calcium carbonate, rock wool, chicken grit feeds, and miscellaneous related products, are conducted at the aforesaid location, where the Company operates a quarry and a processing plant.

During the 12 months' period beginning June 1, 1942, the Company sold 32,125 tons of various kinds of lime, 1,800 tons of which were sold and delivered to purchasers outside the State of Arizona. During the same period the Company sold and delivered to several large copper smelters in Arizona, 28,934 tons of flotation lime valued at \$174,060, and made sales of 50,128 tons of crushed rock, 44 tons of which were sold and shipped to purchasers outside the State of Arizona. The Company's sales of crushed rock within the State of Arizona were principally to the Arizona Highway Department for construction and maintenance of State highways and to Fort Huachuca and the Douglas and Hereford Airports for construction at these locations. During the same period the Company sold 3,673 tons of silica, 399 tons of which were sold and shipped to points outside the State of Arizona.

In the same 12-month period, the Company purchased natural gas for use in its plant, at a cost to the Company of \$46,911.58. The gas originated in New Mexico, was processed in Texas and was then piped across the State of New Mexico to the Company's plant in Arizona.

We find that the business of the Company has a direct and substantial effect upon the free flow of commerce between the several States and that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

## II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill and Smelter Workers and its Local #470, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about June 25, 1943, the Union requested the Company to grant it recognition as the exclusive bargaining representative of the Company's employees and the Company refused to extend such recognition until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a sub-

<sup>1</sup> *Matter of Couell Portland Cement Company*, 40 N L R B 672, enforced, 108 F (2d) 198 (C. C. A. 9); *Matter of Crowe Coal Co.*, 9 N L R. B. 1149, enforced, 104 F (2d) 633 (C. C. A. 8).

stantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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

The parties are in agreement that all production and maintenance employees, excluding watchmen, technical and clerical employees, foremen, and all other supervisory employees with authority to hire and discharge, constitute an appropriate bargaining unit. They are in disagreement as to several subforemen, whom the Union would include in and the Company would exclude from the unit.<sup>3</sup> The Union's contention that these employees should be included in the unit rests entirely upon the fact that they spend varying portions of their time doing manual labor. It is undisputed, however, that it is the responsibility of these subforemen to report to their supervisors on the conduct and ability of their subordinates, and to make recommendations with respect to hire, discipline, and discharge. The subforemen, therefore, clearly fall within our customary definition of supervisory employees. They will be excluded from the appropriate unit.

We find that all production and maintenance employees of the Company at Paul Spur, Arizona, excluding watchmen, technical and clerical employees, foremen, subforemen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

<sup>2</sup> The Field Examiner reported that the Union submitted 66 application for membership cards bearing the apparently genuine signatures of persons whose names appear on the Company's pay roll of June 28, 1943, which contained the names of 81 employees in the appropriate unit.

<sup>3</sup> The subforemen are Lorenzo Rodriguez, Gonzalo Rodriguez, Francisco Espinosa, and Rafael Sepulveda.

## 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 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Paul Lime Plant, Paul Spur, Arizona, an election 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 Twenty-first 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 the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and 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 election, to determine whether or not they desire to be represented by International Union of Mine, Mill and Smelter Workers, for itself and on behalf of its Local #470, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.