

In the Matter of POTASH COMPANY OF AMERICA, and LOCAL 415, INTERNATIONAL UNION, MINE, MILL & SMELTER WORKERS (CIO)

Case No. 16-R-693.—Decided November 6, 1943

*Mr. Stephen Hart*, of Denver, Colo., for the Company.

*Messrs. Elmo Lewis* and *Chesley Smothermon*, of Carlsbad, N. Mex., and *Mr. Orville Larson*, of Miami, Ariz., for the C. I. O.

*Mr. Wallace E. Royster*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition and amended petition duly filed by Local 415, International Union, Mine, Mill & Smelter Workers (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Potash Company of America, Carlsbad, New Mexico, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Carlsbad, New Mexico, on October 1, 1943. The Company and the C. I. O. appeared, participated, and 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

Potash Company of America is a Colorado corporation authorized to do business in New Mexico, and is engaged in the business of mining, processing, and selling potash products. Its only plant is located near Carlsbad, New Mexico. The Company maintains offices in New

York, N. Y., Atlanta, Georgia, and Denver, Colorado. The principal product processed, sold, and delivered by the Company is muriate of potash. During 1942, the Company shipped finished products from its Carlsbad plant, having a value of approximately \$10,000,000, to points outside New Mexico. The Company does not contest the jurisdiction of the Board, and we find it to be engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Local 415, International Union, Mine, Mill & Smelter Workers (CIO) is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated at the hearing that in the month of July 1943 the C. I. O. informed the Company that it represented a majority of the employees in the unit for which it contends and requested recognition as the exclusive bargaining representative of such employees. The Company refused to grant the recognition requested.

A statement of the Field Examiner, introduced into evidence at the hearing, and other evidence in the record, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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 petition of the C. I. O. as amended requests a unit composed of the following:

All office and clerical employees of the Company at its Carlsbad, New Mexico, operations, including senior stenographers, junior stenographers, senior clerks, junior clerks, senior secretary, junior secretary, accountants, and junior accountants, but excluding senior accountants, purchasing agent and his assistant, and all employees in a supervisory capacity.

The Company bases its opposition to the establishment of such a bargaining unit on divers grounds. It argues that clerical and office

<sup>1</sup> The Field Examiner stated that the C. I. O. submitted 6 applications for membership and 2 assignments for union initiation, all bearing the apparently genuine original signatures of persons allegedly employed by the Company. The Company did not submit a pay roll for examination but testimony at the hearing indicates that there are 17 employees within the appropriate unit.

employees, such as those now under consideration, are in an intimate and confidential relationship to management to the same extent as supervisory employees and, under the doctrine adopted by the Board in the *Maryland Drydock Company* case,<sup>2</sup> may not constitute an appropriate bargaining unit. The Company argues further that the Union, already the recognized collective bargaining representative of the Company's production and maintenance employees, should not be permitted to represent a further group of employees differing in interests and problems from those already represented. Lastly the Company urges that the office employees here concerned form a heterogeneous group without common problems and that their interests would best be served by individual bargaining.

These arguments have been considered by the Board in earlier cases.<sup>3</sup> The decision in the *Maryland Drydock Company* case, above, has no application to other than supervisory employees and units of office and clerical employees are not peculiarly affected thereby. Since there is nothing in the Act, as interpreted by the Board and the Courts, which imposes a disability on clerical and office employees in respect to representation as distinguished from employees generally, such employees may constitute appropriate bargaining units and exercise their right under Section 7 to bargain collectively through representatives of their own choosing and we have frequently so held.<sup>4</sup> The fact that the representative seeking so to represent is also the representative of a separate group of employees is of no moment.<sup>5</sup> All of the employees in the unit sought by the Union work in the same group of offices and their duties are closely integrated. Despite the Company's contention to the contrary, office and clerical employees may have interests and problems made common by their daily associations and employment and may be permitted to judge for themselves whether or not to seek solution of these problems and furthering of these interests by collective bargaining. While all such employees may have access to confidential information, as contended by the Company, they are not, with the exception described below, recipients of confidential information relating to labor relations.

While not receding from its general contentions relating to the propriety of establishing the unit sought, the Company asserts that the Union is attempting to describe a unit which will avoid the inclusion of certain individuals whom it has been unable to obtain as members. The Company contends that such considerations alone have impelled the Union to request the exclusion of:

*Two Senior Accountants* who are employed in keeping the book records of the Company concerning sales, purchases, accounts receiv-

<sup>2</sup> *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733.

<sup>3</sup> See *Matter of Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

<sup>4</sup> *Matter of Chrysler Corporation (Marysville Plant)*, 36 N. L. R. B. 157.

<sup>5</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

able, accounts payable, and the preparation of various cost and financial data. One of these, W. H. Bartlett, is assistant to the Company's comptroller and in charge of the office in the absence of the comptroller. His recommendations as to the discharge of employees would be followed by the Company. We find that Bartlett thus possesses supervisory authority and for that reason shall exclude him from the unit. The other, C. B. Battiste, performs the same work as Bartlett but appears to have no supervisory duties. His compensation is higher than that received by other office employees but we do not regard this consideration to require his exclusion. We find Battiste to be an office employee of the Company without supervisory authority and shall include him in the unit.

*The Purchasing Agent* who receives requisitions from various department heads and issues purchase orders in consequence thereof. He ascertains the best source of supply for the needs of the Company and may bind the Company within certain limits. He appears to be a part of the hierarchy of management and there is testimony in the record that he may possess some supervisory authority. We conclude that his duties are essentially managerial and for that reason we shall exclude him from the unit.

*The Clerk in the Purchasing Department* who keeps a record of all purchase orders issued, the status of deliveries, and the matching of invoices and receiving slips. When conditions permit he performs general clerical work in the office. Except that his duties are somewhat specialized, his work is similar to that of other office employees and we shall include him in the unit.

Both parties agree to the inclusion of *the senior secretary*. It appears from the record, however, that this employee handles the correspondence of officers of the Company and necessarily is the recipient of confidential information concerning labor relations as well as other business of the company. We have generally adhered to a policy of excluding employees who occupy such a relationship to management and we shall exclude the senior secretary from the unit here requested.

Neither of the parties has made any contention, other than generally as stated above, with respect to the employees in the remaining categories. We find that all office and clerical employees of the Company at its plant near Carlsbad, New Mexico, including senior stenographers, junior stenographers, senior clerks, junior clerks, junior secretary, accountants, junior accountants, C. B. Battiste, and the clerk in the purchasing department, but excluding W. H. Bartlett, the purchasing agent, the senior secretary, and all supervisory employees having 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 pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

## 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 Potash Company of America, Carlsbad, New Mexico, 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 Sixteenth 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 any 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 Local 415, International Union, Mine, Mill & Smelter Workers (CIO), affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.