

In the Matter of BEULAH ANDERSON AND SAM B. DUNHAM, DOING BUSINESS AS 'ANDERSON BOARDING & SUPPLY CO.,' AND AMERICAN POTASH & CHEMICAL CO., A CORPORATION, and INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, LOCAL 414, C. I. O.

*Case No. 21-R-2297.—Decided June 5, 1944*

*Mr. J. H. Peckham*, of Los Angeles, Calif., for the Corporation.

*Mr. Harry C. Cogen*, of Los Angeles, Calif., for the Boarding Company.

*Messrs. James Robinson*, of Los Angeles, Calif., and *William Teel*, of Los Angeles, Calif., for the C. I. O.

*Messrs. Walter Cowan and Irvan J. Cary*, of Los Angeles, Calif., for the A. F. of L.

*Mr. William Whitsett*, 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 & Smelter Workers, Local 414, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Anderson Boarding & Supply Company, herein called the Boarding 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 Los Angeles, California, on April 26, 1944. At the hearing the Trial Examiner granted the motion of the C. I. O. to amend the designation of the Boarding Company to include the names of its partners and to add the name of the American Potash & Chemical Co., a corporation, herein called the Corporation, as coemployer.<sup>1</sup> The Trial Examiner likewise granted a motion of Culinary Workers and Bartenders Local 572, AFL, herein called the A. F. of L., to inter-

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<sup>1</sup> The Boarding Company and the Corporation are herein sometimes collectively called the Companies.

vene. The Boarding Company, the Corporation, the C. I. O., and the A. F. of L. appeared and participated. All parties 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 an 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 COMPANIES

The Boarding Company, a partnership with its principal office and warehouse at Los Angeles, California, is engaged in the business of industrial feeding and operates restaurants in and about industrial and military establishments in Arizona, Utah, Colorado, and California. At the Trona, California, operation, the only one here concerned, the Boarding Company employs approximately 110 persons. Total purchases by the Boarding Company during 1943 were in excess of \$750,000. Total sales for 1943 were in excess of \$2,600,000; of that amount approximately \$475,000 represented business done at Trona. During the same year the Boarding Company in the usual course of its business transported from its California warehouse to its Arizona operations food stuffs and material valued at \$50,000.

We find that the Boarding Company is engaged in commerce within the meaning of the National Labor Relations Act.

The Corporation is engaged in the manufacture of potash, boric acid, borax, soda ash, and sodium sulphate from brine extracted from Searles Lake at Trona, California. Total purchases for the operation of its California plant during 1943 were in excess of \$1,300,000 of which more than \$159,000 represented purchases made outside the State. During the same period more than 90 percent of its total sales of more than 280,000 tons of finished products was sold and shipped outside the State.

The Corporation admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

The Corporation contends that it is not an employer of the employees involved in this proceeding. There is a written agreement between the Companies whereby the Boarding Company, which furnishes food and drinks to employees of the Corporation, is guaranteed a minimum monthly profit of \$1,000, with the Corporation making up the loss when the profit is less and evenly dividing the excess. Under this agreement the Boarding Company agrees "not to have or keep in its employ any person objectionable, for any reason, to Corporation."

Whereas the employees involved in this proceeding have in practice been hired, paid, and supervised by the Boarding Company, in view of the agreement, which, among other things, gives the Corporation absolute control over the hire and discharge of employees, we find that the Corporation is also an employer within the meaning of Section 2 (2) of the Act, of the employees involved herein.<sup>2</sup>

## II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill & Smelter Workers, Local 414, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Culinary Workers and Bartenders Union, Local 572, affiliated with Hotel and Restaurant Employees' International Alliance and Bartenders International League of America, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Boarding Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of its employees until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

The A. F. of L. claims an interest in this proceeding growing out of its alleged organizational activity among the employees since 1941. However, after ample notice, it failed to make any showing that it represented any employees in the unit herein found to be appropriate. The evidence as to its organizational activity in this case is insufficient to warrant the granting of its request that it be placed on the ballot.

## IV. THE APPROPRIATE UNIT

The unit sought by the C. I. O. is a functionally and administratively integrated group of employees separately housed and en-

<sup>2</sup> *Matter of Bethlehem-Fairchild Shipyard, Incorporated and M & M Restaurant Operating Company, Inc*, 53 N. L. R. B. 261.

<sup>3</sup> The Field Examiner reported that the C. I. O. submitted 65 cards; that the names of 41 persons appearing on the cards were listed on the Boarding Company's pay roll of February 24, 1944, which contained the names of 103 employees in the appropriate unit; and that 64 cards were dated between January and March 1944, while 1 card was undated.

gaged in similar pursuits for the primary purpose of furnishing food and drink to industrial workers. The Companies do not dispute the appropriateness of the unit sought by the C. I. O.

We find that all employees on the pay roll of the Anderson Boarding and Supply Company employed in and about the mess hall, coffee shop, cocktail lounge, patio, and kitchens operated in connection therewith at Trona, California, including bakers, bartenders, bus boys, butchers, chefs, cooks, dish washers, fountain help, head waiters, pantry men, porters, pot washers, utility men, vegetable men, waiters and waitresses, but excluding cashiers, mess hall stewards, chief stewards, managers, assistant managers, floor managers, 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Anderson Boarding & Supply Company and American Potash & Chemical Company, Trona, California, 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 & Smelter Workers, Local 414, C. I. O., for the purposes of collective bargaining.