

In the Matter of APACHE POWDER COMPANY and INTERNATIONAL
CHEMICAL WORKERS UNION, AFL

Case No. 21-R-2492.—Decided December 16, 1944

Mr. F. J. Ryley, of Phoenix, Ariz., and *Mr. W. F. Jones*, of Benson, Ariz., for the Company.

Messrs. Wade Church and *Charles Coffee*, of Phoenix, Ariz., for the Union.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Chemical Workers Union, AFL,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Apache Powder Company, Benson and Douglas, 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 Phoenix, Arizona, on October 30, 1944. The Company and the Union 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 COMPANY

The Apache Powder Company, a New Jersey corporation, is engaged in the manufacture of explosives at its powder plant at Benson, Arizona, and at its sulphuric acid plant at Douglas, Arizona, both

¹ At the hearing, the name of the petitioner was amended from Arizona State Federation of Labor to International Chemical Workers Union, AFL. See footnote 2, *infra*.

of which are involved in this proceeding. During the year 1943, the Company's gross sales were in excess of \$2,500,000, of which at least 25 percent consisted of shipments to points outside the State of Arizona. During the same period, the Company's purchases exceeded \$1,000,000 in value, of which in excess of 90 percent was secured from sources outside the State of Arizona.

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

II. THE ORGANIZATION INVOLVED

International Chemical Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union 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 Union represents a substantial number of employees in the unit it alleges to be appropriate.²

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 Union seeks a unit composed of all production and maintenance employees at the Company's Benson and Douglas plants, including powerhouse employees, the storekeeper, the chemist, the laundress, the head carpenter; the working shop foreman, the powder line repairman, full-time laborers, guards, and the research and laboratory helpers, but excluding bus drivers, gardeners, janitresses, office and clerical employees, and all other supervisory employees. The Company contends that the production employees, the maintenance employees, and the powerhouse employees each constitute separate appropriate units by virtue of a dissimilarity in their interests. However,

² The statement reveals that the Union submitted 55 authorizations for representation to the Field Examiner; that 50 were dated in July 1944, 4 in August 1944, and 1 was undated; and that there are 140 employees in the alleged appropriate unit. At the hearing, the Company made a motion to dismiss the petition for the reason that there is no evidence that its employees had designated the Union as their representative. The record discloses that a substantial number of the authorizations for representation had originally been executed in the name of the Arizona State Federation of Labor, and that subsequent to the submission of the authorizations to the Field Examiner, the Union became the successor to the Arizona State Federation of Labor and assumed jurisdiction over the employees involved herein. The Company's motion is hereby denied.

in view of the integrated operations of the Company, and the absence of any evidence disclosing that other organizations are interested in the maintenance and powerhouse employees or that these employees are not subject to substantially the same working conditions as the production employees, we find that a plant-wide unit, as proposed by the Union, is appropriate for the purposes of collective bargaining. The Company would exclude the following employees:

Storekeeper: The Union characterizes this employee as a warehouseman. The Company maintains that the storekeeper is part of the purchasing department, to which it allocates the cost of his salary, and therefore should be excluded as a clerical employee. The record reveals that the storekeeper is stationed in the storeroom, that the major portion of his time is devoted to the maintenance of records relating to stores, and that the balance of his time is spent in checking stores and disbursing materials. Moreover, in the absence of the storekeeper's helper, whom the Company regards of a production employee, it is incumbent upon the storekeeper to perform the necessary manual work. Although the storekeeper may be regarded as an adjunct of the purchasing department, his activities are directly related to the operations in the plant; we shall, therefore, include him in the unit hereinafter found appropriate.

Chemist: The chemist is engaged in research work of a highly specialized character relating to the chemical composition of explosives. In view of the technical and professional character of his duties, we shall exclude the chemist.

Guards: The Company employs seven armed and deputized guards who police the plant and presumably perform the monitorial duties customarily assigned such employees. We shall exclude the deputized guards from the unit.³

Working shop foreman: The record discloses that the working shop foreman directs the work of approximately 15 shop employees who are responsible to him for the manner in which they perform their tasks, and that he possesses authority effectively to recommend changes in the status of such employees. Since the working shop foreman possesses supervisory functions within our customary definition, we shall exclude him.

We find that all production and maintenance employees at the Company's plants at Benson and Douglas, Arizona, including powerhouse employees, the laundress, the head carpenter, the powder line repairman, the storekeeper, the research and laboratory helpers, and full-time laborers, but excluding bus drivers, gardeners,⁴ janitresses,

³ See *Matter of Ingalls Shipbuilding Corporation*, 59 N. L. R. B. 924.

⁴ We find that Ramon O. Mendoza, classified on the pay roll as "part-time laborer, practically pensioner," who is primarily engaged in gardening duties falls within the above excluded category.

guards, the chemist, office and clerical employees, the working shop foreman, and all or any 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Apache Powder Company, Benson and Douglas, 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 the 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 Chemical Workers Union, affiliated with the American Federation of Labor, for the purpose of collective bargaining.