

In the Matter of ATLANTIC STATES GAS COMPANY OF NEW YORK, INC.,
EMPLOYER and CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND
HELPERS UNION, A. F. L., LOCAL NUMBER 65, PETITIONER

Case No. 3-RC-250.—Decided July 6, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed,¹ a hearing was held before Richard Lipsitz, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner and the Intervenor are labor organizations claiming to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to represent a unit consisting of all service men, meter readers, tank truck drivers, installation men, bulk plant men, storekeepers, clerks, and crew foremen at the Employer's Cortland, New York, plant excluding all office employees, the dispatcher, plant foremen, chief foremen, guards, and professional employees. In the alternative, if the Board finds that a unit limited to employees in the Cortland plant is inappropriate, the Petitioner is willing to proceed to an election in a unit including also the employees at the Employer's Horseheads, New York, plant. The Employer contends

¹ The Employer's and Petitioner's names appear as amended at the hearing.

² The hearing officer permitted Chauffeurs, Teamsters, Warehousemen and Helpers Union, A. F. L., Local 529, herein called the Intervenor, to intervene with the consent of the parties hereto, because of a jurisdictional claim over some of the employees involved in this proceeding.

that only a unit coextensive with its entire operations and including employees at both its Cortland and Horseheads plants is appropriate. The Intervenor agrees with the Petitioner's contention that only a unit of Cortland employees is appropriate. All the parties agree, however, that the unit should be composed of the employee categories set forth in the petition.

The Employer is engaged in the business of selling bottled gas and in the sale, installation, and servicing of equipment and appliances fueled by bottled gas. Its main office and plant is at Cortland, New York, from which its area of operation extends over a radius of 65 miles. It also maintains a small plant at Horseheads, New York, 50 miles from Cortland, which was established about 2 years ago to serve a concentration of customers in that sector. The Horseheads plant provides the same services that are obtainable at Cortland. It likewise sells bottled gas, but processes all its sales through the Cortland office.

Approximately 47 employees are employed at the Cortland plant and 5 employees at Horseheads. A single operating manager is in charge of all business activities and personnel matters³ at both plants, and spends 2 days each week at Horseheads. Employees at both plants are hired, promoted or discharged by the operating manager, although the foreman at each plant may, in his absence, hire employees subject to his approval. All pay-roll and other personnel records are centralized at Cortland. Working hours, pay rates, job classifications, and employee benefits are the same at both plants. Upon the establishment of the Horseheads plant, it was staffed with employees from Cortland who now reside at Horseheads. The Employer testified, however, that if warranted, these employees would be transferred back to Cortland. Employees are sometimes initially hired at Cortland for employment at Horseheads. Occasionally employees from the Cortland plant will work for a day at Horseheads, returning upon completion of their duties to Cortland.

The Petitioner's charter from its International limits its jurisdiction to an area comprising only the Employer's Cortland employees, whereas the Intervenor's charter grants it jurisdiction over an area which includes the Horseheads employees. The Petitioner and Intervenor assert that no attempt has been made to organize the Horseheads employees and that these employees have not requested representation by either of these labor organizations. They contend that because of these circumstances, and because of the distance between the two plants, a unit of only the Cortland employees should be es-

³ The operating manager, however, does not have charge of the Employer's salesmen.

established. We find that these contentions lack sufficient merit.⁴ In view of the integration of the Employer's operations, its centralized personnel administration, the identical duties, conditions of employment and compensation for all its employees, the small size of the plants, the fact that there is some contact between employees of both plants, and the willingness of the Petitioner to represent the Horseheads employees, we find that a unit consisting of the Cortland and Horseheads employees is appropriate.⁵

A question arises as to whether crew foremen should be included in the unit. These employees are working foremen in charge of crews of three to five men who install equipment on the customer's premises and are responsible for the proper completion of each job. They are required to have more training and experience than the crew members from whose ranks they are promoted, and their pay substantially exceeds that of crew members. They keep the time records for the crews and make recommendations concerning the hiring, discharge and increase in salary of crew members which are given great weight. We find, despite the agreement of the parties to include these employees, that crew foremen are supervisors within the meaning of the Act, and shall exclude them from the unit.⁶

We find that all service men, meter readers, tank truck drivers, installation men, bulk plant men, storekeepers, and plant clerks,⁷ at the Employer's Cortland and Horseheads, New York, plants excluding all office employees, the dispatcher, plant foremen, chief foremen, crew foremen, guards, professional employees, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION ⁸

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later

⁴ *Matter of American Republics Corporation*, 78 N. L. R. B. 1025.

⁵ *Matter of Boland Manufacturing Company*, 83 N. L. R. B. 1254; *Matter of Brown Express, et al.*, 80 N. L. R. B. 753; *Matter of Bar-Tack Manufacturing Co. Ltd.*, 77 N. L. R. B. 203.

⁶ *Matter of Lloyd Corp., Ltd.*, 79 N. L. R. B. 1477; *Matter of the Murray Company*, 77 N. L. R. B. 481.

⁷ As the parties stipulated to exclude all office employees we presume that the clerks whom they desire to include are plant clericals, although the record does not indicate that there are employees in this category. If in fact there are such employees they shall be included in the unit.

⁸ If the Petitioner does not desire to participate in an election at this time in the unit found appropriate, we shall permit it to withdraw its petition upon notice to the Regional Director within 5 days after issuance of this Direction.

than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Chauffeurs, Teamsters, Warehousemen and Helpers Union, A. F. L., Local Number 65.