

In the Matter of ATLAS POWDER COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN and ORDER OF RAILWAY CONDUCTORS

Case No. 8-RE-20.—Decided July 7, 1945

*Mr. L. D. Ake*, of Apco, Ohio, for the Company.  
*Mr. S. R. Harvey*, of Cleveland, Ohio, for the BRT.  
*Mr. J. H. Rodgers*, of Louisville, Ky., for the ORC.  
*Mr. Jack Mantel*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by Atlas Powder Company, Apco, Ohio, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Cleveland, Ohio, on May 7, 1945. The Company, Brotherhood of Railroad Trainmen, herein called the BRT, and Order of Railway Conductors, herein called the ORC, 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,<sup>1</sup> the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Atlas Powder Company, a Delaware corporation, operates the government-owned Ravenna Ordnance Center at Apco, Ohio, where it is engaged

<sup>1</sup> In its brief, the Company requested the correction of certain minor errors in the transcript of testimony. No objections having been filed, the record is corrected as requested.

in the loading, storing, renovating, and shipping of ammunition and bombs. The material passing through the Center is valued in excess of \$1,000,000 per year, all of which is shipped to points outside the State of Ohio.

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

## II. THE ORGANIZATIONS INVOLVED

Brotherhood of Railroad Trainmen, unaffiliated, is a labor organization admitting to membership employees of the Company.

Order of Railway Conductors, unaffiliated, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company assumed the operation of the Ravenna Ordnance Plant on August 26, 1940, and on August 19, 1943, it took over the operation of the Portage Ordnance Depot. Together, the Plant and Depot are known as the Ravenna Ordnance Center. The Plant and Depot are contiguous, containing 109 and 21 miles of railroad track, respectively.

In July 1942, the BRT was certified by the Board in two separate units of Plant employees, one covering trainmen, consisting of yard conductors, brakemen, switch tenders, and block station attendants; and the other embracing yardmasters and assistant yardmasters.<sup>2</sup> Thereafter the Company and the BRT entered into separate collective bargaining contracts, one for trainmen, and the other for yardmasters. In September 1943, as the result of a consent cross-check, the ORC was designated by the Regional Director in a single unit of all trainmen and yardmasters at the Depot.<sup>3</sup> Subsequently, the Company and the ORC entered into separate contracts, one for trainmen, and the other for yardmasters at the Depot. Each of the contracts which the Company had with the BRT and the ORC has now expired.

In its petition, the Company requests a merger of the Plant and Depot trainmen and yardmasters into one bargaining unit. Although the BRT is in accord with this position, the ORC claims that, in accordance with its past contracts with the Company, separate units comprised solely of Depot trainmen and yardmasters are appropriate. It is contended by the ORC that the Company's petition should be dismissed on the ground that no petition for an investigation and certification of representatives has been filed by employees. This contention, in our opinion, is without merit, since our Rules and Regulations provide for the filing of a petition by an em-

<sup>2</sup> See *Matter of Atlas Powder Company*, 41 N. L. R. B. 127, and 42 N. L. R. B. 846. Yardmasters and assistant yardmasters are herein collectively called yardmasters.

<sup>3</sup> *Matter of Atlas Powder Company*, Case No. 8-R-1270.

ployer where, as here, he is confronted with conflicting claims to representation made by two labor organizations.<sup>4</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 UNITS

The ORC opposes the establishment of the single unit of Plant and Depot employees sought by the Company and the BRT, because of its prior designation, without objection by the Company, as bargaining representative solely for employees of the Depot.

While it is true that the Company consented to a cross-check and entered into separate contracts with the ORC, one for trainmen, and one for yardmasters at the Depot, it was not until November 1943, about 3 months after the ORC's designation, that the Company began to consolidate various functions of the Depot and Plant as part of the program to form a single operation to be known as the Ravenna Ordnance Center. Since that time, the Company has merged the railroad and track equipment maintenance functions of the Plant and Depot into one transportation department, and has created for both the Plant and Depot one accounting department, one stores department, one purchasing department, one plant-protection department, one safety department, one engineering department, and one employment department. The record indicates that the Company is desirous of completely unifying the Plant and Depot.<sup>5</sup> It thus appears that, at present, employees of the Depot and Plant should be represented together for the purposes of collective bargaining.<sup>6</sup> Since, however, collective bargaining has been conducted on the basis of separate units for trainmen and yardmasters, a division which remains unaffected by the integration of Plant and Depot, we are of the opinion that such groupings should be preserved.

We find, accordingly, that each of the following groups of the Company's employees employed at the Ravenna Ordnance Center constitutes a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act:

1. All yard conductors, brakemen, switch tenders, and black station attendants, excluding all supervisory employees with authority to hire,

<sup>4</sup> See Article III, Sections 1 and 2 (b), of National Labor Relations Board Rules and Regulations—Series 3, as amended

<sup>5</sup> In April 1944, the War Department requested the Company to consolidate the operations performed by the 62 trainmen and 3 yardmasters employed at the Plant with those performed by the 19 trainmen and 3 yardmasters at the Depot, in order to conserve critical manpower and equipment. The record discloses that such a merger would dispense with a train classification yard at the Depot, eliminate 4 train crews, release 1 locomotive, and effectuate an annual saving of \$93,400 in manpower and equipment.

<sup>6</sup> See *Matter of Moraine Products Division, General Motors Corporation*, 56 N. L. R. B. 1887.

promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All yardmasters and assistant yardmasters, excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

#### DIRECTION OF ELECTIONS

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 Atlas Powder Company, Apco, Ohio, elections 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 Eighth 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 units 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 they desire to be represented by Brotherhood of Railroad Trainmen, or by Order of Railway Conductors, for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Elections.