

sional employees. Their vote on the second question will then be counted to decide whether or not they desire to be represented by the Petitioner in a separate professional unit. If a majority vote for the Petitioner in either the professional unit alone, the nonprofessional unit alone, or the combined unit, the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for such unit or units.

[Text of Direction of Elections omitted from publication in this volume.]

WM. P. McDONALD CORPORATION *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 925, 925-A, 925-B, AND 925-C, AFL, PETITIONER. *Case No. 10-RC-1549. January 31, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Jerold B. Sindler, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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

1. The Employer owns and operates a rock quarry at Brooksville, Florida. The Employer also manufactures concrete brick and intermittently operates an asphalt plant at the same location. During the year ending June 30, 1951, the Employer purchased \$220,000 worth of materials and equipment of which approximately \$37,000 worth was shipped to the Employer's plant from outside the State of Florida. In the same period the Employer made sales of approximately \$400,000 in value.¹ Of these sales, approximately \$53,000 worth was made to the State Road Department of Florida and other purchasers who utilized the materials in the construction and maintenance of public roads and public utilities.

Upon the foregoing facts we find, contrary to the Employer's contention, that its operations affect commerce within the meaning of

¹ The Employer's products are sold f. o. b. at the quarry. The Employer's sales of rock are negotiated through Florida Crushed Stone Company the stock of which company is owned jointly by the Employer and Camp Concrete Rock Company. The Employer's president and vice president occupy the same offices in the Florida Crushed Stone Company organization and the latter company acts only as a sales agent for the Employer and Camp Concrete Rock Company. We find on these facts that the Employer and Florida Crushed Stone Company constitute, for these purposes, a single employer within the meaning of the Act. See *Camp Concrete Rock Company*, 94 NLRB 296 and cases cited therein.

the Act. Moreover, as the Employer furnished materials, valued in excess of \$50,000, necessary to the maintenance and operation of highways, roads, and public utilities of the State of Florida, we find that it will effectuate the purposes of the Act to exercise jurisdiction over the Employer's operations.²

2. The labor organization involved claims to represent certain employees of the Employer.³

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 requests that the Board find appropriate a unit of all production and maintenance employees, helpers, and leadermen, excluding office and clerical employees, professional employees, guards, watchmen, and all supervisors as defined in the amended Act. The Employer is in general agreement with the Petitioner as to the composition of the appropriate unit, but the parties differ as to the supervisory authority of several employees.

Employee Roush is in charge of a gang of 8 to 10 men who work on the Employer's railroad trackage, load brick and perform general cleanup work. Roush is paid a higher hourly rate than the men in his crew. The Petitioner contends that Roush should be excluded from the unit as a supervisor. Inasmuch as the record shows that this individual has authority effectively to recommend, the hiring, discharge, discipline, and change of status of employees and has exercised such authority in the past, we find, contrary to the contention of the Employer, that Roush is a supervisor as defined in the Act and is excluded from the unit.

Employee Gilmore, classified as a repairman, does general "trouble shooting" around the plant and has a crew of two or three laborers working with him on week ends. The Petitioner also seeks to exclude this employee as a supervisor while the Employer would include him in the unit. The record shows that the repairman does not have authority to hire or discharge employees or effectively to recommend such action. The record further shows that the repairman exercises only routine direction of the work of his crew.⁴ Accordingly, we find that the repairman is not a supervisor as defined in the amended Act, and we shall include him in the unit.

² See *Camp Concrete Rock Company, supra*; and *Hollow Tree Lumber Company*, 91 NLRB 635.

³ At the hearing, the Employer moved to dismiss the petition on grounds relating to the compliance status of the Petitioner. The fact of compliance by a labor organization which is required to comply, is a matter for administrative determination and is not litigable by the parties. Moreover, the Board is administratively satisfied that the Petitioner is in compliance. See *Sunbeam Corporation* 94 NLRB 844; Cf *Highland Park Manufacturing Company*, 71 S. Ct 489.

⁴ While the Employer testified that this employee had authority to "discipline" laborers in his crew, the record shows clearly that the repairman's authority in this respect is limited to the level of minor measures such as a verbal reprimand.

The parties also agree that the head electrician, the grader, and the brick machine operator should be included in the unit. However, the record shows these classifications all have authority effectively to recommend hiring, discharge, and disciplining of employees. We find, accordingly, that the head electrician, the grader, and the brick machine operator are supervisors as defined in the amended Act, and we shall exclude them from the unit.

The Board finds that all production and maintenance employees of the Employer at its Brooksville plant, including truck drivers and helpers, leadermen, and the repairmen, but excluding office and clerical employees, professional employees, guards, watchmen, the head electrician, the grader, and the brick machine operator and all other supervisors as defined in the amended Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

TWIN FALLS CANAL COMPANY *and* GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL NO. 483, AFL, PETITIONER. *Case No. 19-RC-791. January 31, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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

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

1. The Employer is a nonprofit corporation operating a canal system servicing 202,000 acres of farmland, approximately 45 by 16 miles in area in the State of Idaho. In the exercise of its water-furnishing functions, it operates canals and laterals, and constructs and maintains drainage ditches, drainage wells, and tunnels. Additionally, it engages in rodent and weed control along its canals, and on the lands of its farmer stockholders.

Each acre of land served by the corporation controls 1 share of stock in the Employer. In addition to the approximately 3,000 water users on farm lands who receive the benefits of the operations, the

¹ We find no merit in the Employer's contention that the hearing was illegal because it was not conducted in accordance with the Administrative Procedure Act. See *Deep Oil Development Company*, 74 NLRB 941.