

probationary employees were found eligible to vote by the Board. We reaffirm this finding.

Probationary employees, such as those involved here, receive and hold their employment with a contemplation of permanent tenure, subject only to the satisfactory completion of an initial trial period. Their general conditions of work in other respects, and their employment interests, are like those of regular employees. We do not believe, as a matter of policy, that the eligibility of probationary employees should turn on the proportion of such employees who, willingly or not, fail to continue in the employ of the employer throughout the trial period. Nor does there otherwise appear any valid reason, in our opinion, for withholding from probationary employees the right to vote on the question of collective-bargaining representation. Consequently, we adopt the rule for application here and in future cases that probationary employees are entitled to vote in Board elections.²

[Text of Direction of Election omitted from publication.]

²To the extent that they are inconsistent herewith, we hereby overrule, e.g., Shelbourne Shirt Co., 86 NLRB 1308; National Warehouse Corp., 80 NLRB 368; Crossley Corp., 56 NLRB 1722.

ALLIANCE SAND COMPANY *and* UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, AFL, Petitioner. Case No. 4-RC-2150. February 24, 1954

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 Julius Topol, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. We deny the Employer's request for oral argument as the record and brief fully present the positions of the parties on the issues involved herein.

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

1. The Employer is a Pennsylvania corporation engaged in the operation of a sand quarry at Palmerton, Pennsylvania, and a retail outlet for sand and building materials at Northampton, Pennsylvania. During the year 1952, its total sales from both operations amounted to \$536,065.71, of which \$106,398.54 represents the retail sales made to customers within the State and not engaged in interstate commerce. Of the \$429,667.17 representing sales from the quarry operation, \$45,641.76 represents sales to 9 cement companies, Bethlehem Steel Corporation, and New Jersey Zinc Co., all located within the State but all making annual sales in excess of \$25,000 to customers outside the State of Pennsylvania.

The Employer made 1 out-of-State sale during the year 1952 amounting to \$3,989.78. No out-of-State sale was made in 1953.

Purchases by the Employer during the same period, 1952, amounted to \$189,867.73, and were as follows: coal, cement, etc., purchased within the State for resale at the retail yard amounting to \$77,229.04; equipment purchased within the State for use at the quarry amounting to \$104,888.07 (no information was available as to whether any part of this equipment originated outside the State); and repair parts for quarry machinery purchased from outside the State, amounting to \$7,750.62.

Both parties stipulated that Dragon Cement Company, 1 of the Employer's customers, owns approximately 60 percent of the stock of the Employer. This company has 2 plants: 1 in Northampton, Pennsylvania, and 1 in Thomason, Maine. Each of these plants annually sells and ships interstate commerce products valued in excess of \$100,000. The Employer transacts business with the Dragon Cement Company on the same basis as it does with other companies. Total sales to Dragon Cement Company approximated \$4,047.42 during the year 1952.

The Employer moved to dismiss the petition on the ground that its operations do not affect commerce within the meaning of the Act, and that, in any event, the Board should not assert jurisdiction here. The motion is denied. The Board does not consider the facts concerning the relationship between the Employer and the Dragon Cement Company sufficient to establish integration of these corporations to the extent that it will regard them for jurisdictional purposes as one operation.¹ However, upon the basis of all the facts, the Board finds that the Employer is engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction herein. In asserting jurisdiction, Members Murdock and Peterson rely upon the principle stated in Rutledge Paper Products, Inc.² Chairman Farmer concurs in the assertion of jurisdiction but is not to be deemed thereby as agreeing with the Board's present standards as a permanent policy.

2. The labor organization involved claims to represent certain 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 a unit of employees who work at the quarry at Palmerton, Pennsylvania, and at the crusher and screening plant located about 1,500 feet from the quarry. It would exclude all employees at the retail yard, 3 truckdrivers and a helper, and the office clerical employees who are located

¹See Toledo Service Parking Company, 96 NLRB 263; Jefferson Co., Inc., 105 NLRB 202.

²91 NLRB 625.

about 11 miles from Palmerton, at Northampton, Pennsylvania. The Employer took no position at the hearing as to the truckdrivers and helper, but in its brief urges their inclusion in the unit. It agrees to the exclusion of the office clerical employees who are located at Northampton and handle the clerical work for both operations.

The Employer's operation consists of drilling and blasting for the material at the quarry, located on top of a mountain. The stone is then picked up with a power shovel and conveyed to the crusher plant by motor vehicles called "quarrying dumpsters." After being crushed the stone is stockpiled. A conveyor belt carries it from the stockpile to the screening plant located approximately 1,500 feet down the mountain, where it is screened and sized, put into different bins from where it is loaded onto trucks and railroad cars for delivery.

Two of the truckdrivers from the retail yard spend approximately 50 percent of their time hauling sand from the quarry to the retail yard, and the remaining 50 percent in hauling purchased coal to the yard. The other 2 truckdrivers make deliveries from the yard to customers. Although a truck is kept at the quarry, no employee there is classified as a truckdriver, but anyone who has need of a truck for any purpose uses it. Many of Employer's customers use their own trucks to take sand from the quarry, and the Employer has a contract hauler who does its hauling.

The record is silent as to the supervision of the truckdrivers, but apparently they work out of the retail yard not covered by the unit here requested. There is no evidence of interchange between these truckdrivers and the employees at Palmerton. We find that the contact between the Palmerton employees and the truckdrivers is not sufficient to justify including the truckdrivers from the retail yard in the unit of quarry and screening operation employees.

The parties agree that the superintendent of the Palmerton operation is a supervisor, but the Petitioner would include all other employees; the Employer would exclude the assistant superintendent, shift foremen, and watchmen.

Assistant superintendent: Elmer Ahner had occupied this position for only 3 or 4 months before the hearing. Prior to that he had been a well driller. His duty is to repair and maintain all equipment at both the quarry and screening plant, to assist the superintendent, and in the absence of the superintendent to keep everything operating. During the brief period Ahner has served as assistant superintendent, the superintendent has not been absent longer than part of a day, according to Ahner, and a day or two, according to the Employer. The Employer states that Ahner has not been given the authority to discharge employees. He has recommended the hiring of a person who was subsequently hired and he has had occasion to reprimand an employee. During the superintendent's absence, he may find it necessary to reassign some employees when a breakdown occurs. However, Ahner

testified that the superintendent usually leaves instructions when he leaves; that he does not know whether he can discharge an employee; and that his disciplinary duties have not been described to him. In view of all the facts, particularly the fact that Ahner's position is above that of the shift foremen, discussed below, who are supervisors, we find that the assistant superintendent is a supervisor and we exclude him from the unit.

Shift foremen: At the screening plant the Employer operates 3 shifts. Alternating between the first and second shifts are 2 foremen, Clifford Messinger and Thomas Wehr. Both have been with the Employer a number of years and each testified he had authority to hire and discharge, and/or effectively to recommend such action. No occasion has arisen for them to discharge anyone, nor have they made any recommendation for such action. Both have effectively recommended the hiring of employees.

As shift foremen, each performs the duties of weighmaster and repairman, and directs the activities of approximately five men on his shift. Two instances are given in the record where Clifford Messinger exercised disciplinary authority.

Both shift foremen are hourly paid, but receive a 10-cent to 15-cent higher hourly rate than other shift employees are paid. In view of the above facts and the uncontradicted testimony that they have authority to hire and discharge, we find that the shift foremen are supervisors as defined in the Act and exclude them from the unit.

On alternating weeks, William Swanger is in charge of the third shift. Every other week, the men work without a leader, receiving instructions from Messinger before he leaves. Both parties stipulate that when Swanger works on the day shift, he is a rank-and-file employee; that when he works on the night shift he directs the employees in their routine duties; that in matters involving the use of independent judgment, he confers with the superintendent. Neither party objects to including Swanger in the unit. In view of the above, we find that he is not a supervisor and shall include him in the unit hereafter found appropriate.

Watchmen: The Employer has 2 employees who spend in excess of 50 percent of their time making periodic trips around the premises of the Employer to watch for fire and protect the property from theft. In their spare time, they perform duties such as greasing in the crusher room, cleaning the office at the quarry, and other miscellaneous chores. We find the watchmen are guards and exclude them from the unit.³

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's operation at Palmerton, Pennsylvania, including the employees

³ Walterboro Manufacturing Corporation, 106 NLRB 1383.

at the quarry crusher and screening operation, but excluding all employees at the retail yard and in the office at Northampton, Pennsylvania, the assistant superintendent, shift foremen, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Member Rodgers took no part in the consideration of the above Decision and Direction of Election.

DAVID DANKNER d/b/a DANKNER MOTOR SALES *and*
AMERICAN FEDERATION OF LABOR, Cases Nos. 3-CA-
678 and 3-CA-693. February 25, 1954

DECISION AND ORDER

On October 30, 1953, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report, and the Respondent filed a supporting brief. The Respondent's request for oral argument is hereby denied as, in our opinion, the exceptions and brief adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases, and hereby adopt the findings,¹ conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, David Dankner d/b/a Dankner Motor Sales, Buffalo, New York, his agents, successors, and assigns, shall:

1. Cease and desist from:

¹Although Chairman Farmer and Board Member Rodgers agree that jurisdiction should be asserted in this proceeding on the basis of the direct inflow, they are not to be deemed thereby as agreeing with the Board's present jurisdictional standards. Members Murdock and Peterson would assert jurisdiction on the customary basis that the Respondent is an integral part of a nationwide system for the distribution of automobiles. Baxter Bros., 91 NLRB 1480; Howell Chevrolet Co. v. N. L. R. B., 346 U. S. 482 (1953).