

American Potash & Chemical Corporation and International Union of Operating Engineers, Local No. 501, AFL-CIO, and Painters, Decorators and Paperhangers of America, Local Union No. 159, AFL-CIO, Petitioners. Cases Nos. 20-RC-3247 and 20-RC-3260. May 9, 1957

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing on these consolidated cases was held before Shirley N. Bingham, 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 these cases to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

Upon the entire record, the Board finds:

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

2. The labor organizations involved claim to represent certain employees of the Employer.²

3. A question affecting commerce exists in Case No. 20-RC-3247 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; however, no such question exists in Case No. 20-RC-3260.

4. In Case No. 20-RC-3247, International Union of Operating Engineers, Local No. 501, AFL-CIO, herein called Operating Engineers, seeks to sever a unit of steam plant operators and compressor operators at the Employer's Henderson, Nevada, chemical manufacturing plant. In Case No. 20-RC-3260, Painters, Decorators and Paperhangers of America, Local Union No. 159, AFL-CIO, herein called Painters, seeks a unit of painters. Chemical Workers, which

¹The Employer, and Intervenor, Chemical Workers, Local No. 218, International Chemical Workers Union, AFL-CIO, herein called Chemical Workers, except to the hearing officer's rulings rejecting offers of proof that (1) the petitions were filed in violation of no-raiding provisions of the AFL-CIO constitution; and (2) if permitted, Employer witness D. L. Pitts would testify that an inexperienced man could be trained in 6 months to do the painting done by the Employer's painters. (1) As requested by the excepting parties, the Board has reconsidered its policy, affirmed in *Minute Maid Corporation*, 117 NLRB 68, that violation of the no-raiding clause of the AFL-CIO constitution is not grounds for dismissing a petition, and has decided to adhere to the policy stated in that case. The hearing officer's ruling was therefore correct. (2) As witness Pitts supervises the work of painters and hires and fires them, he was qualified to testify as to training required to perform painting duties in this plant. The hearing officer's ruling excluding his testimony, referred to above, was therefore error, but in view of our decision as to painters, the ruling was not prejudicial.

²International Association of Machinists, Local Lodge No. 845, AFL-CIO, which intervened, without objection, to protect its interests as representative of a machinists unit, does not wish to appear on the ballot in any election directed herein.

currently represents the requested employees as part of a production and maintenance unit, and the Employer contend that the requested units do not conform with the Board's requirements for severance.

(a) *Case No. 20-RC-3247*: The steam plant operators are responsible for 4 boilers of 28,000 pounds per hour capacity each, which are fired by gas, with an oil standby. The boilers are located in a single, separate building. They supply heat to tanks of chemicals as part of the production process, and also supply heat to the plant buildings. For organizational purposes the steam plant operators, along with compressor operators, instrument repairmen, painters, and laborers, are in a department headed by the functional craft foreman, who is responsible to the superintendent of crafts and functions. The steam plant operators remain in the vicinity of the boilers most of the time, checking and regulating pressures, temperatures, and water levels, and running chemical analyses of water used in the boilers. They enter all such activities in a log book. Although steam plant operators are not licensed, and many of them were recruited from other maintenance classifications, they were trained for approximately 1½ years on the job. They do not interchange with other employees, and others are not permitted to touch the equipment for which they are responsible, except to oil and repair it. Under these circumstances, we find that the steam plant operators, although not craftsmen, constitute a functionally distinct powerhouse group entitled to separate representation if they so desire.³ Moreover, they are requested by a union which historically and traditionally represents such a powerhouse unit.

Compressor operators, whom Operating Engineers seeks to include in the unit with the steam plant operators, are classified by the Employer as refrigeration plant operators. They operate four 450-horsepower 4-cylinder vertical compressors located in 2 production buildings. The function of the compressors is to cool tanks of chemicals, as part of the production process. These employees observe and regulate pressures and temperatures on the compressors in the compressor rooms, and on the chemical tanks in the production areas. Access to the compressors is prohibited to other employees except those engaged in repair work. Compressor operators do not interchange with other employees, except that their leadman spends part of his time training to be a steam plant operator. The compressor operators were formerly production employees, and the record does not show what training they have had, or what is required, to qualify them to perform their present duties.

On the record as a whole, it is apparent that the compressor operators do not work in close association with steam plant operators, and do not, with those operators only, comprise a separate department. They

³ *American Potash & Chemical Corporation*, 107 NLRB 1418, 1425.

may not, therefore, be included in the powerhouse unit.⁴ The record does not show that the compressor operators possess the skills of true craftsmen, and they do not constitute a traditional departmental group.⁵ We find, accordingly, that the compressor operators may not sever from the existing unit.⁶

(b) *Case No. 20 RC-3260*: The Painters requests severance of the Employer's 11 painters, on a craft basis. As indicated above, these painters are under the supervision of the functional craft foreman for administrative purposes. Their work is scheduled in various areas of the plant, where it is immediately supervised by the area foremen who are responsible to the superintendent of areas and planning. From 95 to 99 percent of their work is maintenance painting of surfaces which have been painted previously, and the remainder is construction painting of new surfaces. They paint interior and exterior walls and surfaces, floors, motors, pumps, beams, and pipes. They use premixed paints, which they occasionally blend to achieve a different color. They do not use pigments. Decisions as to kind of paint, color, and preparation necessary are made by area foremen or the superintendent of areas and planning. The chief purpose of the painting done is protection, and high quality workmanship is not required. Although 2 of the 11 painters testified they are journeymen, there is no evidence as to the qualifications of the other 9 painters. The Employer requires only that the painters it hires have "some" experience, and conducts no apprentice or training program.

In view of the foregoing, we find that whether or not the employees sought by the Painters are craftsmen, the record fails to establish that they are required in the course of their duties to exercise craft skills.⁷ Accordingly, the unit sought by the Painters is inappropriate for purposes of severance⁸ and we shall therefore dismiss the petition in Case No. 20-RC-3260. Accordingly, we find that the following employees may constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All steam plant operators at the Employer's Henderson, Nevada, chemicals manufacturing plant, excluding all other employees, compressor operators, guards, and supervisors as defined in the Act.⁹

We shall, however, make no final unit determination at this time, but shall first ascertain the desires of these employees as expressed

⁴ See *American Bosch Arma Corporation*, 115 NLRB 226

⁵ *Inland Cold Storage Company, Inc.*, 115 NLRB 973

⁶ Although the compressor operator leadman spends part of his time at those duties and part in training as a steamplant operator, the record does not reveal what proportion of his time is spent at each job. As it has thus not been established that he appropriately should be included in the powerhouse unit, we shall exclude him

⁷ Compare *North American Aviation, Inc.*, 113 NLRB 1049, 1051-1053.

⁸ *American Potash and Chemical Corporation*, 107 NLRB 1418, 1424

⁹ As we have found appropriate a unit more limited in scope than that requested by the Petitioner, Operating Engineers, that Union may withdraw its petition upon proper application to the Regional Director

in the election directed herein. If a majority vote for the Petitioner, Operating Engineers, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election is directed to issue a certification of representatives to the Petitioner for the voting group described above, which the Board under the circumstances finds to be an appropriate unit for the purposes of collective bargaining. If a majority do not vote for the Petitioner, these employees shall remain a part of the existing unit and the Regional Director will issue a certification of results of election to such effect.

[The Board dismissed the petition in Case No. 20-RC-3260.]

[Text of Direction of Election omitted from publication.]

Pacific Fruit and Produce Company and Chauffeurs, Teamsters and Helpers Union, Local No. 448, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. *Case No. 19-RC-1940. May 9, 1957*

DECISION, DIRECTION, AND ORDER

Pursuant to a stipulation for certification upon consent election dated January 7, 1957, an election was conducted under the supervision and direction of the Regional Director for the Nineteenth Region in the agreed appropriate unit. Following the election the Regional Director served on the parties a tally of ballots which showed that 2 votes were cast for, and 2 against Petitioner and 2 ballots were challenged. As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, in accordance with the Rules and Regulations of the Board, caused an investigation to be made, and on March 7, 1957, issued his report on challenged ballots in which he recommended that the Petitioner's challenge to Caryl Fausett's ballot be sustained on the ground that Fausett is a supervisor and that the Employer's challenge to Ray Allen's ballot be overruled and said ballot be opened and counted.

The Employer filed timely exceptions to the Regional Director's report in which it excepted to the recommendation sustaining the Petitioner's challenge of Fausett's ballot. It requested that the Board overrule that challenge or, alternatively, direct that a hearing be held on Fausett's alleged supervisory status. No exceptions were filed with respect to the Regional Director's recommendation that Ray Allen's ballot be opened and counted.