

work to production and maintenance employees currently represented by it.

2. Within 10 days from the date of this Decision and Determination of Dispute, both Local 423, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, and Pipe Fitters' Local No. 522, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, shall each notify the Regional Director for the Ninth Region, in writing, whether or not they will refrain from forcing or requiring American Synthetic Rubber Corporation or American Rubber and Chemical Company, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner other than determined above.

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**Inspiration Consolidated Copper Company<sup>1</sup> and International Guards Union of America, Ind., Petitioner. Case No. 28-RC-1056. April 16, 1963**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. 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 National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Chairman McCulloch and Members Leedom and Fanning].

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

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

2. The Petitioner seeks a unit of guards and watchmen at the Employer's mining and ore processing operations in Inspiration, Gila County, Arizona. The Employer contends that the Petitioner is not qualified under Section 9(b)(3) of the Act to represent a unit of guards because it is indirectly affiliated with the International Union of Mine, Mill and Smelter Workers, Independent,<sup>2</sup> a Union which admits nonguard employees to its membership.

The record shows that on December 17, 1962, Leo Terrill, international representative of the Smelter Workers, a collective-bargaining representative for nonguard employees of the Employer, filed a petition on behalf of his Union for the same unit of employees requested

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The International Union of Mine, Mill and Smelter Workers, Independent, is herein after referred to as the Smelter Workers.

herein. On learning that the petition would be dismissed because the Union admits employees other than guards to its membership, Terrill made inquiries as to a union which could represent the unit and learned about the Petitioner, which is a collective-bargaining representative for only guards. Further, it appears that upon telling some of the individuals involved in the instant petition about the inability of his union to represent them and about the Petitioner, they requested that Terrill communicate with the Petitioner to determine whether Petitioner was interested in representing them.

About the middle part of December 1962, Terrill contacted the Petitioner's vice president, Robert Byrd, who told Terrill that Petitioner was interested in representing the unit herein. Terrill then gave this information to the interested employees who then asked Terrill to secure authorization cards from the Petitioner. Terrill again communicated with Byrd and as a result Byrd mailed Terrill authorization cards. On receiving the cards, Terrill gave them to an interested group of individuals in the unit, who in turn proceeded to have them signed. After the cards were signed, they were returned to Terrill who returned them by mail on January 2, 1963, to Byrd. Based on these cards, although it had no personal contact with the individuals involved, on January 4, 1963, the Petitioner sent a letter demanding recognition of the Employer and filed the instant petition.

Subsequent to the filing of the petition, 2 days prior to the hearing herein, Byrd held his first meeting of the employees in the unit sought at the Smelter Workers Union hall which Byrd had rented, due to the fact that the Petitioner has neither a local nor a meeting hall in Gila County, Arizona. At the meeting Terrill explained to the members of the unit why the Smelter Workers could not represent them. Thereafter, it appears that Byrd directly supervised all of Petitioner's organizational activities of the unit herein.

On these facts, we do not agree with the Employer that the Petitioner is indirectly affiliated with the Smelter Workers; nor would we find any direct affiliation. While the record shows that the Smelter Workers gave the Petitioner some assistance by advising them of the opportunity to organize the guards and through limited participation in the solicitation of authorization cards, the record shows that the Smelter Workers' assistance was terminated at the Petitioner's first meeting with the employees in the unit sought herein. Further, there is nothing in the record which in our opinion shows the prospect of any future assistance by the Smelter Workers.<sup>3</sup> We conclude, on the record as a whole, that Petitioner is an independent organization with no direct or indirect affiliation within Section 9(b)(3). Accordingly, we find that the Petitioner is a labor organization which does not admit to membership, and is not affiliated directly or indirectly

<sup>3</sup> Cf. *Mack Manufacturing Corporation*, 107 NLRB 209.

with an organization which admits to membership, employees other than guards.<sup>4</sup>

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

4. The Petitioner and the Employer agree that a unit of guards and watchmen is an appropriate unit. However, the Employer would exclude from the unit three individuals named Parsons, Meadows, and Sosh, who the Employer contends spend a major part of their time exercising supervisory authority. The Petitioner contends that these employees are leadmen who should be included in the unit. The record shows that these individuals perform the work of shift foreman, three out of five shifts a week. While performing these duties, these individuals are solely in charge of their shifts, receive a higher rate of pay than the rest of the guards, responsibly direct the employees working under them, assign work, and grant time off. We find on these facts and the entire record that Parsons, Meadows, and Sosh perform supervisory duties. Further, as they exercise the powers of supervisors for substantial periods of time in the regular course of their work, we shall exclude them from the unit as supervisors.<sup>5</sup>

Accordingly, we find that the following employees constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All guards and watchmen at the Employer's mining and ore processing operations in Inspiration, Gila County, Arizona, excluding office clerical employees and all other employees, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>4</sup> *Federal Services, Inc.*, 115 NLRB 1729.

<sup>5</sup> *United States Gypsum Company*, 127 NLRB 134.

**Louisiana Television Broadcasting Corporation and Local 995,  
International Brotherhood of Electrical Workers, AFL-CIO.**  
*Cases Nos. 15-CA-2066 and 15-CA-2096. April 17, 1963*

### DECISION AND ORDER

On December 21, 1962, Trial Examiner Henry S. Sahn 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 it cease and desist therefrom and take certain affirmative action, as set forth in the attached Inter-