

& Warehousemen's Union, shall notify the Regional Director for the Twentieth Region, in writing, whether or not it will refrain from forcing or requiring Puget Sound, Bay Cities, or Shipowners, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to warehousemen who are its members, rather than to tugboat deckhands who are represented by the Inlandboatmen's Union of the Pacific.

Bagdad Copper Company and Construction, Building Material & Miscellaneous Drivers Union, Local #83, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Petitioner. *Case No. 28-RC-1115. November 12, 1963*

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 J. W. Cherry, Jr., 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 [Chairman McCulloch and Members Fanning and Brown].

Upon the entire record in this case, including the briefs filed by both the Petitioner and the Employer, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. Construction, Building Material & Miscellaneous Drivers Union, Local #83, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers (hereinafter referred to as the Petitioner), requests that the Board find appropriate a unit of all pit department employees at the copper mining and milling operations of Bagdad Copper Company (hereinafter referred to as the Employer), excluding all clerical, managerial, and professional employees, and all guards and supervisors as defined by the Act. The Employer opposes the petition, contending that the only appropriate unit consists of all employees.

The Employer operates an open-pit copper mine and concentrating mill at Bagdad, Arizona. These operations and the contiguous town-

site, which is also owned by the Employer, are in an area with a radius of approximately 10 miles. The operations are administered by a number of departments. Each department is supervised by a separate departmental superintendent. In general, the pit department does the mining and transports the ore to the crushers; the milling department does the crushing and extracts the copper by a mechanical process; the leach department extracts the copper from the ore by an electrochemical process; the pilot plant performs experiments to develop and apply new methods to extract the copper from this particular type of ore; the general maintenance department services all movable and some immovable mechanical equipment; the engineering department does all construction and design work, camp maintenance, and well drilling; the electrical department takes care of all electrical problems in the operations; the store department operates grocery and mercantile stores; the hospital furnishes medical services.

The Employer employs over 400 employees, of whom 130 work in the pit department, the unit which the Petitioner requests.

The record shows that the employees in the pit department form a homogeneous, identifiable, and distinct unit within the Employer's organization. Thus, the pit department employees work different shifts and days from all other employees. They are under a separate departmental superintendent and foremen. No other department has the same classifications. Transfers of employees to or from the pit department are occasional and of a permanent nature; only seven transfers into, and two out of, the pit department occurred in the last 19 months. Pit department employees perform a type of work that is distinct from that performed by the other employees, whether they work in or outside of the pit area, and employees from the other departments are not loaned to the pit department to perform such work. The pit department superintendent takes an active part in the selection of employees suitable for employment in this department. These employees are subject to hazards different from those faced by other employees.¹ The pit department is also subject to separate cost accounting. Separate timecards are kept for the department. While the record is not entirely clear, it appears that seniority is on a departmental basis.

It is true that there are some factors which would justify the larger unit contended for by the Employer. Thus, all employees receive the same fringe benefits. Paydays are the same for all employees, and all payroll and employee records are kept at a central office. A single person is responsible for companywide safety. Company-owned houses are available to all employees on the same

¹For example, pit department employees are subject to the usual open-pit mining hazards such as falling rock, vehicle collisions, and blasting. Employees of other departments are subject to different hazards, such as dust, fire, and electrical and mechanical failures

basis, and, apparently, all employees rent these houses. Furthermore, companywide units are presumptively appropriate for purposes of collective bargaining.²

However, Section 9(b) of the Act, in empowering the Board to decide in each case "the unit appropriate for the purposes of collective bargaining," directs it to make an appropriate unit determination which will "assure to employees the fullest freedom in exercising the rights guaranteed by this Act"—i.e., the rights of self-organization and collective bargaining. Recently, the Board, in order to effectuate this mandate, reemphasized its view that the Act does not compel labor organizations to seek representation in the most comprehensive grouping of employees unless such grouping constitutes the *only* appropriate unit.³ While a unit consisting of all employees of the Employer might also be appropriate for the purposes of collective bargaining, there is no bargaining history to support such unit.⁴ In these circumstances, the Board has consistently held that appropriateness of companywide units does not establish that a smaller unit is inappropriate.⁵ Thus, the issue here is simply whether a unit consisting of only pit department employees is appropriate under the circumstances of *this* case, and *not* whether another unit, consisting of all employees, would also be appropriate, more appropriate, or most appropriate.

It is our opinion that the pit department is sufficiently homogeneous, identifiable, and distinct from the other departments to warrant a finding that the employees therein have a mutuality of interests not shared by other employees which is sufficient to justify their establishment as a separate bargaining unit. Therefore, we find that the employees in the pit department constitute an appropriate unit which "will assure to employees the fullest freedom in exercising the rights guaranteed by the Act."⁶ Furthermore, in support of the requested unit, we also note that no labor organization seeks to represent these employees in a broader unit. Accordingly, we find that 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:

² *Western Electric Company, Incorporated*, 98 NLRB 1018, 1032.

³ *P. Ballantine & Sons*, 141 NLRB 1103. See also *F. W. Woolworth Company*, 144 NLRB 307; *Diezle Belle Mills, Inc.*, 139 NLRB 629; *Sav-On Drugs, Inc.*, 138 NLRB 1032; *Quaker City Life Insurance Company*, 134 NLRB 960.

⁴ Five previous elections (in 1944, 1945, 1952, 1956, and 1958) have been held in the unit urged by the Employer here, but none resulted in the selection of a bargaining representative and no collective bargaining ensued. In 1961 another petition for a representative election was filed and then withdrawn by the union.

⁵ *P. Ballantine & Sons*, *supra*, footnote 3; *Diezle Belle Mills, Inc.*, *supra*, footnote 3.

⁶ *Bagdad Copper Corporation*, Case No. 21-RC-2407, etc. (May 14, 1952), not published in NLRB volumes, relied upon by the Employer in its brief, is clearly distinguishable from the instant case. In the instant case, unlike the earlier one, all employees within the pit department are sought to be represented.

All employees employed in the pit department of the Employer at its Bagdad, Arizona, operations, but excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined by the Act.

[Text of Direction of Election omitted from publication.]

Frank B. Smith d/b/a Little Lump Coal Co. and Floyd and Lee Dotson. *Cases Nos. 9-CA-2812-1 and 9-CA-2812-2. November 13, 1963*

DECISION AND ORDER

On August 13, 1963, Trial Examiner Thomas F. Maher 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 Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in these cases,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

The Trial Examiner found, and we agree, that the Respondent unlawfully solicited authorization cards from his employees on behalf of SLU, thereby violating Section 8(a)(1) and (2). We also find that since SLU did not represent an uncoerced majority of the Respondent's employees on December 20, 1962, the Respondent further violated Section 8(a)(2) and (1) by recognizing SLU as such rep-

¹ The Trial Examiner found that the bargaining agreement between Respondent and the Southern Labor Union, hereinafter referred to as SLU, was, except for a more liberal vacation provision, the same as the one previously executed by United Mine Workers and the predecessor company, Frank and Frank B. Coal Company. The record shows that the terms in the SLU agreement were, except for a more liberal vacation provision, the same as those provided to employees by the Respondent prior to the negotiation of the SLU agreement, and not the same as those provided in the Frank and Frank B. Coal Company agreement. This error is corrected, but does not otherwise require modification of the Trial Examiner's conclusions and recommendations.