

In the Matter of DIAMOND MAGNESIUM COMPANY and PLANT GUARDS'
LOCAL #23456, A. F. L.

Case No. 8-R-1221.—Decided October 6, 1943

Mr. Charles J. Smith, of Cleveland, Ohio, and *Mr. Frank J. Blazina*, of Painesville, Ohio, for the Company.

Mr. Jesse Gallagher, of Cleveland, Ohio, for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Plant Guards' Local #23456, affiliated with the A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Diamond Magnesium Company, Painesville, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Painesville, Ohio, on September 7, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company moved to dismiss the petition on the ground that the unit involved herein was determined at a prior proceeding.¹ The Trial Examiner reserved ruling for the Board. The motion is hereby denied for reasons appearing hereinafter. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

¹ *Matter of Diamond Magnesium Co.*, 48 N. L. R. B. 67.
52 N. L. R. B., No. 204.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Diamond Magnesium Company, an Ohio corporation, is a wholly owned subsidiary of Diamond Alkali Company. It operates a defense plant in Painesville, Ohio, built by the Defense Plant Corporation, where it manufactures magnesium and magnesium alloy metals which are used entirely by the United States Government in the war effort. The value of the raw materials used at the plant, as well as the value of the products made by the plant, exceeds \$100,000 annually.

II. THE ORGANIZATION INVOLVED

Plant Guards' Local #23456, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about June 28, 1943, the Union requested recognition from the Company and also requested the Company to set a date for the purpose of negotiating an agreement. The Company refused to grant such request unless and until the Union was certified by the Board.

A statement prepared by a Field Examiner, introduced in evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Company contends that the parties in a previous proceeding³ agreed that there would be only one bargaining unit for the Company's employees, namely, a unit composed of all hourly paid and piece-work employees in production and maintenance, excluding foremen, supervisors, watchmen, guards, clerical employees, nurses, and main labora-

² The Field Examiner's statement shows that the Union submitted 40 application-for-membership cards, 34 of which bear apparently genuine signatures and names of persons whose names are listed on the Company's pay roll of August 10, 1943; there are 48 employees in the appropriate unit. The cards were dated during the months of June and July 1943.

³ *Matter of Diamond Magnesium Co.*, footnote 1, *supra*.

tory employees. The Company further contends that plant-protection employees, as well as other excluded employees, were thereby precluded from constituting a separate bargaining unit. We find the position taken by the Company with respect to that agreement to be untenable; with the exception of the Company, none of the parties involved therein are parties in the instant proceeding. We accordingly find that the agreement between the Company and the various unions in the prior proceeding is not a bar to this proceeding.

It was stipulated by the parties, in the event the Board overruled the Company's contentions, as set forth above, that the unit represented by the Union is appropriate. We find that all hourly paid plant-protection guards of the Company, excluding guard lieutenants, guard captains, the plant-protection officer, and all other supervisory plant-protection employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Diamond Magnesium Company, Painesville, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were

employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause to determine whether or not they desire to be represented by Plant Guards' Local #23456, affiliated with the A. F. of L., for the purposes of collective bargaining.