

In the Matter of DAVIS FIRE BRICK COMPANY and UNITED CONSTRUCTION WORKERS, UNITED MINE WORKERS OF AMERICA

Case No. 9-R-1225.—Decided November 4, 1943

Mr. Chester P. Fitch, of Portsmouth, Ohio, for the Company.

Mr. Victor S. Delano, of Bellaire, Ohio, for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Construction Workers, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Davis Fire Brick Company, Oak Hill, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin Cook, Trial Examiner. Said hearing was held at Jackson, Ohio, on October 13, 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 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Davis Fire Brick Company is an Ohio corporation with its principal place of business at Oak Hill, Ohio, where it is engaged in the manufacture of fire brick. During 1942 the Company manufactured products valued in excess of \$25,000, approximately 60 percent of which was shipped to points outside the State of Ohio. All clay

used by the Company is shipped to it from points within the State of Ohio. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Construction Workers, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 13, 1943, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

On December 29, 1942, an election was held among the employees of the Company with the Union on the ballot. The election resulted in an indecisive vote. The Company contends that no election should be held at this time and that the petition should be dismissed because of the short period that has elapsed since the December 29, 1942, election. The record shows that the Union has obtained 14 new membership application cards since the December 29, 1942, election. We find the position taken by the Company to be untenable.¹

A statement of an agent of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 Union urges that all production and maintenance employees of the Company, excluding temporary employees, foremen, supervisors, working foremen, and office employees, constitute an appropriate unit. The only controversy with respect to the unit concerns working foremen. The Union would exclude them from the unit while the Company would include them. At the time of the hearing the Company did not employ any working foremen. Accordingly, we shall make no specific determination with respect to them at this time. If working foremen are employed in the future, they will be included or excluded depending upon whether they fall within the definition of supervisory employees set forth below.

¹ See *Matter of Automatic Products Company*, 40 N. L. R. B. 941.

² The Board agent reported that the Union presented 14 application cards bearing apparently genuine signatures of persons whose names appear on the pay roll of the Company. There are approximately 39 employees in the appropriate unit.

We find that all production and maintenance employees of the Company, excluding temporary employees, office employees, foremen, and any other supervisory employees who have the authority to hire, discharge, discipline, promote, 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 means of 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 Davis Fire Brick Company, Oak Hill, 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 Ninth 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 and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Construction Workers, United Mine Workers of America, for the purposes of collective bargaining.