

IN THE MATTER OF UNITED STATES GYPSUM COMPANY and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 13-R-2222.—Decided March 18, 1944

Scott, McLeisch & Falk, by Mr. H. D. Burgess and Mr. O. E. Gibson, of Chicago, Ill., for the Company.

Messrs. Oakley Mills and Edward Gary, Jr., of Chicago, Ill., for the CIO.

Messrs. F. J. Crimmins and Peter A. Koziol, of Chicago, Ill., for the Association.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of United States Gypsum Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Chicago, Illinois, on January 21, 1944. The Company, the CIO, and Hermosa Shop Association, herein called the Association, 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 an 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

United States Gypsum Company, an Illinois corporation, operates mines, mills, and warehouses in a substantial number of the States

of the United States, including the plant at Chicago, Illinois, herein involved, which is known as the Hermosa Plant. The principal business normally carried on by the Company is production and distribution of building materials. At present, however, the Hermosa Plant is engaged 100 percent in production of war material. The raw materials used at the Chicago plant consist primarily of steel, having an annual value of more than \$100,000, in excess of 90 percent of which is brought into the State of Illinois from other States. One hundred percent of the finished products, having an annual value of more than \$200,000, is delivered to points outside the State of Illinois.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Hermosa Shop Association is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refused to grant recognition to the CIO as the exclusive bargaining representative of its employees for the reason that at the time the request for recognition was made by the CIO, the Company was bound by a contract with the Association. That contract expired on February 1, 1944, and is, therefore, no bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 parties are in agreement that all production and maintenance employees at the Company's Chicago plant including "working supervisors," all shipping department employees, watchmen, and janitors, but excluding managers, superintendent, shift foremen, working fore-

¹The Regional Director reported that the CIO submitted 42 authorization cards which he checked against the Company's pay roll of December 19, 1943, which contained the names of 69 employees in the appropriate unit, and that all the cards were dated December 1943.

The Association relied upon its contract to show its interest in the matter.

men, office and clerical employees, draftsmen, and engineers constitute an appropriate unit for bargaining purposes. The CIO would exclude from this unit a person whom it designates as a time clerk. The Company and the Association contend that the so-called time clerk is a production employee and should be included. The employee in question collects time cards in the shop, computes the number of hours worked, and delivers the cards to the foremen. He also performs miscellaneous other utility jobs about the plant in connection with production and at times operates the machines. The Company does not regard him as a timekeeper. Those employees whom the Company does classify as timekeepers are a part of the clerical staff. We consider the time clerk a production employee and shall include him within the unit. We shall also include the "working supervisors" above mentioned since it appears that they are merely gang leaders with no supervisory authority.

We find that all production and maintenance employees of the Company at its Chicago, Illinois, plant, including "working supervisors," all shipping department employees, watchmen, janitors, and the time clerk, but excluding managers, superintendents, shift foremen, working foremen, office and clerical employees, draftsmen, engineers, and all supervisory 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.²

V. THE DETERMINATION OF REPRESENTATIVES

It appears that the number of persons employed by the Company increased by 40 percent between the date of the petition, December 15, 1943, and the date of the hearing. The Company intends to continue expanding until its December 15 employment is doubled. This expansion is for the purpose of filling specific orders but there is substantial expectation that the filling of these orders will require at least a year's time. Pursuant to the contract between the Company and the Association, the Company has adopted a personnel policy whereby all new employees hired by the Company work a probationary period of 90 days during which they have no seniority status and may be discharged by the Company at any time without regard to the restrictions of the contract. The CIO asserts that these are temporary employees and requests that for the purpose of insuring that only permanent employees shall participate in the choice of a bargaining representative, the pay-roll date next succeeding the date of the petition be used to determine eligibility to vote. The Association joins in this request.

² This is substantially the unit described in the Association's contract with the Company.

The Company requests that the Board follow its usual practice of determining eligibility by the use of the pay-roll date immediately preceding the Direction of Election, and suggests that the Unions' avowed purpose can best be served by denying eligibility to temporary employees in its employ as of the later pay-roll date. We find merit in the Company's suggestion but not in the Unions' conception of temporary employment. The employees in question have a reasonable expectancy of permanent employment with the Company for an indeterminate period of time and, therefore, have a substantial interest in the working conditions in the Company's plant.³ Accordingly, we shall provide that probationary employees shall be eligible to vote in the election herein directed. We agree with the parties, however, that certain part-time employees, for the most part housewives, who were hired on a temporary basis pending the Company's ability to hire sufficient full-time employees to meet its need are in fact temporary employees, and they shall not be eligible to vote in the election.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with United States Gypsum Company, Chicago, Illinois, 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 Thirteenth 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, and the determination made in Section V above, 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

³ See *Matter of Equitable Gas Company*, 54 N. L. R. B. 155; *Matter of E. R. Squibb & Sons*, 54 N. L. R. B., No. 222; *Matter of Clarksville Manufacturing Company*, 52 N. L. R. B. 1502.

person at the polls, but excluding those employees 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 they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations or by Hermosa Shop Association, for the purposes of collective bargaining, or by neither.

Mr. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.