

IN THE MATTER OF ASH GROVE LIME & PORTLAND CEMENT CO. and UNITED
CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION,
A. F. OF L.

Case No. 17-R-844.—Decided April 5, 1944

Mr. Myron K. Ellison, of Kansas City, Mo., for the Company.

Mr. Orval Webber, of Dewey, Okla., and *Mr. Charles H. Wasson*, of
Bonner Springs, Kans., 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 Cement, Lime and Gypsum Workers International Union, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ash Grove Lime & Portland Cement Co., Chanute, Kansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Margaret L. Fassig, Trial Examiner. Said hearing was held at Chanute, Kansas, on March 20, 1944. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Ash Grove Lime & Portland Cement Co. is a Maine corporation with its principal office at Kansas City, Missouri. We are here concerned with its plant at Chanute, Kansas, where it is engaged in the manufacture, sale, and distribution of Portland cement. During 1943 the Company sold cement from its Chanute plant valued in excess of

\$100,000, approximately 40 percent of which was shipped to points outside the State of Kansas.

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

II. THE ORGANIZATION INVOLVED

United Cement, Lime and Gypsum Workers International Union is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of the employees in the Chanute plant until such time as the Union is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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 Union urges that all production and maintenance employees at the Chanute plant of the Company, excluding shift engineers, watchmen, office personnel, assistant foremen, and other supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns shift engineers, watchmen, assistant foremen, and George Weatherby.

The Company employs four shift engineers who are in charge of the power plant on their respective shifts. The shift engineers are paid on a monthly salary in contrast to the other employees who are paid on an hourly rate. Inasmuch as the duties of the shift engineers are technical in nature and dissimilar to those of the remaining employees in the unit, we shall exclude them.

The Company employs seven watchmen who perform usual watchmen's duties. They are not armed nor sworn auxiliary military police. Under such circumstances, we shall include watchmen in the unit.

The Company has six persons classified by it as assistant foremen. They are the oldest and most experienced employees and receive the

¹ The Field Examiner reported that the Union presented 63 membership application cards. There are approximately 157 employees in the appropriate unit.

highest rate of pay in their respective classifications. They perform the same type of work as the men working with them, and they have no authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or to effectively recommend such action. We shall include the assistant foremen in the unit.

George Weatherby is the only clerical employee working in the plant. He maintains a card inventory of supplies in a storeroom and frequently assists in the filling of requisitions for supplies. He is paid on an hourly rate. Weatherby will be included in the unit as a production employee.

We find that all production and maintenance employees at the Chanute plant of the Company, including watchmen, and assistant foremen, but excluding shift engineers, office personnel, 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.

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.

The Union urges that it appear on the ballot as "United Cement, Lime and Gypsum Workers International Union, Local Union No. 1941, A. F. of L." The request is hereby granted.

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 Ash Grove Lime & Portland Cement Co., Chanute, Kansas, 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 Seventeenth 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 of the Company 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 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 or not they desire to be represented by United Cement, Lime and Gypsum Workers International Union, Local Union No. 1941, A. F. of L., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.