

In the Matter of UNITED STATES GYPSUM COMPANY and UNITED STEEL-
WORKERS OF AMERICA, LOCAL UNION #1090 (C. I. O.)

Case No. 8-R-1408.—Decided April 13, 1944

Scott, MacLeish, and Falk, by *Mr. Arlindo S. Cate*, of Chicago, Ill., and *Mr. L. B. Crabtree*, of Warren, Ohio, for the Company.

Mr. Harry Wines and *Mr. Frank M. Zeck*, of Warren, Ohio, and *Mr. James C. Quinn*, of Youngstown, Ohio, for the C. I. O.

Miss Marcia Hertzmark, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, Local Union #1090 (C. I. O.), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of United States Gypsum Company, Warren, 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 Warren, Ohio, on February 15, 1944. The Company and the C. I. O. 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

The United States Gypsum Company is an Illinois corporation engaged in the manufacture of building materials. It operates approximately 50 plants, the only plant involved herein being that at Warren, Ohio. The principal raw materials used at the Warren plant are

steel, lumber, and paint. The Company uses more than \$500,000 worth of such materials annually, of which approximately 50 percent is shipped to it from points outside the State of Ohio. It also sells more than \$500,000 worth of its products annually, about 50 percent of which is shipped to points outside the State of Ohio.

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

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, Local Union #1090, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 14, 1943, the C. I. O. requested that the Company confer with it concerning bargaining negotiations. The Company refuses to bargain with the C. I. O. until it is certified by the Board as the majority representative of the employees.

A statement of a Field Examiner introduced in evidence and a statement by the Trial Examiner at the hearing indicate that the C. I. O. 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 C. I. O. and the Company agree that all hourly paid maintenance and production employees of the Company's Warren plant, including watchmen-firemen, but excluding salaried supervisory employees and clerical and office employees, constitute an appropriate unit. However the C. I. O. would include, and the Company desires to exclude, two gate guards from the above unit. These employees are not armed and one of them performs certain duties in the store-room during approximately half of his working shift, relieving the other guard thereafter. They are under the supervision of the master

¹ The Field Examiner's report shows that the C. I. O. submitted 141 authorization cards, 140 of which were dated in January 1944 and one of which was undated. The report states that there were 188 employees in the unit petitioned for. The Trial Examiner stated that the C. I. O. submitted 152 authorization cards, 140 of which were dated in January 1944, 10 of which were dated in February 1944, and 2 of which were undated. All the cards bore apparently genuine, original signatures. The Company's pay roll of February 14, 1944, contains the names of 173 employees within the alleged appropriate unit. A "spot check" by the Trial Examiner of 50 names appearing on this pay roll revealed that 39 of the names appeared on authorization cards submitted by the C. I. O.

mechanic, who also has supervision of the watchman-firemen and mechanical force. They are at present unmilitarized. We see no reason for omitting them from a broad production and maintenance unit and we shall include them.

We find that all hourly paid maintenance and production employees of the Company's Warren, Ohio, plant, including watchmen-firemen and the gate guards, but excluding clerical and office employees, salaried supervisory employees, and any other 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 an election by secret ballot. The Company requests that, because of its rate of personnel turnover, eligibility to vote be determined by use of the pay-roll period immediately preceding the election. We do not, however, consider its labor turnover to be unusual under present circumstances and see no reason to depart from our usual practice. We shall direct that the election be held 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 Company also requests that the Board attempt to furnish ballots by mail to 98 employees now in the armed forces of the United States. Since, as we fully stated in *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. No. 215, Case No. 6-R-859, it is administratively impracticable to provide for mail balloting of employees on military leave who are unable to appear at the polls and a safeguard will be established for their interests, only those employees in the armed forces of the United States who present themselves in person at the polls will be permitted to vote.

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, Warren, 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 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 Steelworkers of America, Local Union #1090 (C. I. O.), for the purposes of collective bargaining.