

In the Matter of HILLSIDE FLUOR SPAR MINES and UNITED MINE  
WORKERS OF AMERICA

Case No. 14-R-922.—Decided May 18, 1944

Pope & Ballard, by Mr. John H. Thomson, of Chicago, Ill., for the Company.

Mr. Scerial Thompson, of Harrisburg, Ill., Mr. Harold Stephenson, of Rosiclare, Ill., for the Union.

Mrs. Margaret L. Fassig, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Hillside Fluor Spar Mines,<sup>1</sup> of Rosiclare, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at Elizabethtown, Illinois, on April 17, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company made a motion at the hearing to dismiss the petition herein on the ground that the Union had not made a sufficient showing of present substantial representation. The Trial Examiner reserved ruling on the motion to the Board. In view of the findings set forth in Section III, *infra*, the motion is hereby denied. 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.

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<sup>1</sup> The petition erroneously designated the Company's name as Hillside Fluorspar Mining Company. This was corrected by amendment at the hearing, and by a stipulation of the parties filed after the hearing, which is hereby approved and made a part of the record.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Hillside Fluor Spar Mines, an Illinois corporation with its home office in Chicago, Illinois, owns and operates mines at Rosiclare, Illinois, and Marion, Kentucky, where it is engaged in the mining of fluor spar, and also operates mills at Rosiclare, Illinois. Only the operations at Rosiclare, Illinois are involved in the present proceeding.

During the year 1943 the Company mined and shipped in interstate commerce at least 10,000 pounds of fluor spar, exceeding \$50,000 in value, and during the same period the Company purchased mining tools valued in excess of \$10,000, of which in excess of 50 percent was purchased and shipped from points outside the State of Illinois to the Company at Rosiclare, Illinois.

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

#### II. THE ORGANIZATION INVOLVED

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

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees at Rosiclare, Illinois until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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<sup>2</sup> The Trial Examiner reported that the Union had submitted 53 authorization cards all of which bore apparently genuine original signatures; that the names of 33 persons appearing on the cards were listed on the Company's current pay roll submitted at the hearing, which contained the names of 110 employees in the appropriate unit; and that the cards were dated as follows: 2 in June 1943, 17 in July 1943, 11 in February 1944, 1 in March 1944, and 2 in April 1944.

The Company contends that the Union failed to make a showing of present substantial representation. In support of this contention, the Company relies principally upon the fact that a substantial number of the Union cards were dated as long ago as June and July 1943. We find no merit in the Company's contention. As we have frequently stated, authorization or membership cards are required, not as proof of the precise number of employees who desire to be represented by a labor organization, or as a basis for determining the exclusive representative, but simply to provide a reasonable safeguard against the indiscriminate institution of proceedings by labor organizations which might have little or no membership in the unit claimed to be appropriate. See *Matter of Hall Stores, Inc.*, 39 N. L. R. B. 874, and cases cited therein; *Matter of Frigidare Division, General Motors Corporation*, 54 N. L. R. B. 55.

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's operations at Rosiclare, Illinois, are comprised of the Hillside Mine, the Dimick Mine, a gravity mill and a flotation mill. Each of the mills uses different methods of producing fluor spar concentrates, but both are located in connecting buildings, and are under the supervision of a single foreman. The main mine is the Hillside Mine, located adjacent to the mills, while the Dimick mine is located approximately one-quarter of a mile north of the Hillside Mine. The entire ore output from both mines is processed at the two mills.

The Union urges that all production and maintenance employees at the Company's mines and mills located at Rosiclare, Illinois, excluding office and clerical employees, technical employees, laboratory employees, chemists, technical engineers, guards and watchmen,<sup>3</sup> auto mechanics, sample boys, janitresses, and all supervisory employees having 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 collective bargaining purposes. The only controversy with respect to the unit concerns the classifications of shift leaders, leaders, head jig man, janitress, sample boy, and auto mechanic.

*Shift leaders:* There is one employee in this classification at each mine. The Union seeks to exclude the shift leaders and the Company seeks their inclusion. The shift leader has charge of the whole shift at the mine and his duties are to assist the foreman in supervising the work of all the employees. He has authority to recommend hire and discharge, disciplinary action and promotions, assigns work, and acts as instructor of new employees. Shift leaders are considered as working foremen by the Company, and receive a higher rate of pay than the men working under them. We find that the shift leaders are supervisory employees and we shall exclude them from the unit.

*Leaders:* The Union seeks exclusion of the employees in this classification and the Company seeks their inclusion. There are approx-

<sup>3</sup> There are seven employees in the classification "guards and watchmen" "Guards" and "watchmen" appear to be used by the Company as synonymous terms for the same class of employees. Originally all of the Company's guards were militarized, but as new men have been hired, they have not taken the oath as members of the auxiliary military police, and now only two or three of them are under oath. However, all seven employees are armed and all are engaged solely in the guarding of Company property. In accordance with the agreement of the parties, we shall exclude the "guards and watchmen" from the unit.

imately three leaders at each mine. They are designated leaders, sometimes termed pushers, solely on the basis of seniority, and they perform the same type of work as the men working under them. 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 leaders in the unit.

*Head jig man:* There is one employee in this classification, working in the gravity mill. The Union seeks his inclusion and the Company seeks his exclusion. The head jig man is designated as such solely on the basis of seniority, and does the same kind of work as the other employees with whom he works. His duties are comparable to those of the leaders, or pushers, in the mines. He has no authority to hire, promote, discharge, discipline, assign work, or otherwise effect changes in the status of employees, or to effectively recommend such action. We shall include him in the unit.

*Janitress:* There is only one employee in this classification. Her duties are to sweep and clean the Company's offices, which are apparently located in a separate building from the mills, and she performs no work outside of the offices. She works under the supervision of the auditor who supervises the regular office employees, and she takes no directions from the foreman of the mine or the mills. The Union seeks exclusion of the janitress from the unit, and the Company seeks her inclusion. It does not appear that there is any substantial community of interest between this janitress and the Company's other production and maintenance employees. We shall accordingly exclude her from the unit.

*Sample boy:* There is one employee in this classification. His duties are to obtain samples in the gravity mill, place the samples in a box, and deliver the samples to the sample room. The Union desires his exclusion, and the Company desires his inclusion. His work is closely associated with that of the other production employees, and we shall include him in the unit.

*Auto mechanic:* The Union seeks the exclusion, and the Company seeks the inclusion, in the bargaining unit, of the only employee in this classification. The duties of the auto mechanic are to repair the truck which is used in delivering ore from the Dimick Mine to the mill. When not engaged in this work, the auto mechanic assists in loading ore, and in the absence of the regular truck driver, he drives the truck in delivering ore from the Dimick Mine to the mill. As it appears that a substantial portion of his time is spent in production work of a similar nature to that performed by other employees in the unit, we shall include the auto mechanic in the unit, as a production employee.

We find that all production and maintenance employees at the Company's mines and mills located at Rosiclare, Illinois, including leaders, head jig man, the sample boy, and the auto mechanic, but excluding

office and clerical employees, technical employees, laboratory employees, chemists, technical engineers, guards and watchmen, the janitress, shift leaders, 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 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 requests that it appear on the ballot as "District 50, United Mine Workers of America." 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 Hillside Fluor Spar Mines, Rosiclare, 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 Fourteenth 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 the 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 District 50, United Mine Workers of America.