

In the Matter of NATIONAL GYPSUM COMPANY and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 9-R-1416.—Decided July 19, 1944

Mr. D. W. Burnett, of Alexandria, Ind., for the Company.

Mr. Stanley E. Stohr, of Terre Haute, Ind., for District 50.

Mr. Jesse W. Peden, of Indianapolis, Ind., for the Stone Workers.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of National Gypsum Company, Alexandria, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James H. Shaw, Trial Examiner. Said hearing was held at Alexandria, Indiana, on June 9, 1944. The Company, District 50, and United Stone and Allied Products Workers of America, C. I. O., Branch 34, herein called the Stone Workers, 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 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

National Gypsum Company, a Delaware corporation, has its principal offices in Buffalo, New York, and numerous plants in different parts of the United States. Its plant at Alexandria, Indiana, with

which this proceeding is concerned, is engaged in the manufacture of rock wool insulation products. This plant's monthly purchases of raw materials used in the manufacturing process are valued at approximately \$50,000, of which 60 percent is received from sources outside the State of Indiana. The monthly production of finished products is valued at approximately \$100,000, of which 85 percent is shipped to points outside the State of Indiana.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, unaffiliated, and United Stone and Allied Production Workers of America, Branch 34, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 25, 1943, the Stone Workers and the Company entered into an exclusive bargaining contract for 1 year, automatically renewable from year to year thereafter unless either party gave notice of a desire to change the contract at least thirty (30) days prior to the anniversary date. It is conceded that neither party to the contract has served notice of a desire to effectuate any change. On March 29, 1944, or more than 30 days prior to the first anniversary date of the contract, District 50, claiming to represent a majority of its employees, requested that the Company start contract negotiations. The Stone Workers contends that its contract constitutes a bar to the present proceeding. The Company takes no position in the controversy but will bargain collectively with whichever union is certified by the Board in an appropriate unit. This case falls squarely within the rule, repeatedly enunciated by the Board, that a contract automatically renewed after a conflicting timely claim to representation has been made, does not constitute a bar to a new election.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 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.

¹ *Matter of Hall Manufacturing Company*, 40 N. L. R. B. 14; *Matter of Kingan & Co., Inc.*, 37 N. L. R. B. 716.

² The Field Examiner reported that District 50 submitted 120 authorization cards; that the names of 101 persons appearing on the cards were listed on the Company's pay roll of May 7, 1944, which contained the names of 114 employees in the appropriate unit; and that 101 cards were dated in March 1944. The Stone Workers, relying on its contract, produced no evidence of membership among the employees of the Company.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all employees of the Company's plant at Alexandria, Indiana, excluding inspectors, clerks, watchmen, janitors, caretakers, main office employees and all or 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 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 National Gypsum Company, Alexandria, Indiana, 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 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 they desire to be represented by District 50, United Mine Workers of America, unaffiliated, or by United Stone and Allied Products Workers of America, Branch 34, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.