

In the Matter of U. S. GYPSUM COMPANY and UNITED STONE AND ALLIED
PRODUCTS WORKERS OF AMERICA, BRANCH #73, C. I. O.

Case 8-R-1546.—Decided August 10, 1944

Mr. Ben E. Welty, of Port Clinton, Ohio, for the Company.

Mr. Sam Sponseller, of Cleveland, Ohio, for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND,

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Stone and Allied Products Workers of America, Branch #73, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of U. S. Gypsum Company, Gypsum, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Port Clinton, Ohio, on June 30, 1944. The Company and the Union appeared and participated.¹ 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

U. S. Gypsum Company, an Illinois corporation, operates plants and mines in various states of the United States including the plant at

¹Notice of Hearing was served on United Brotherhood of Gypsum Workers, herein called the Brotherhood, whose contract with the Company expired on July 20, 1944. The said Union did not appear. Thereafter, the Brotherhood advised the Trial Examiner that it would not participate in the proceeding.

Gypsum, Ohio, with which this proceeding is concerned. This plant, called herein the Gypsum plant, is engaged in the manufacture of gypsum, wallboard, paints, paper, and acoustical products. The annual volume of business at the Gypsum plant exceeds \$1,000,000, of which more than 10 percent represents finished products shipped to points outside the State of Ohio.

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

II. THE ORGANIZATION INVOLVED

United Stone and Allied Products Workers of America, Branch #73, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On March 29, 1944, the Union addressed a letter to the Company stating that it represented a majority of the Company's employees and requesting recognition as the exclusive bargaining representative. The Company refused, stating that the contract which it had with the Brotherhood would not expire until July 20, 1944. The Union filed the petition in the instant case on June 13, 1944. Since the contract between the Company and the Brotherhood has expired and has not been renewed or extended, it does not constitute a bar to the present proceeding.

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.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.

IV. THE APPROPRIATE UNIT

The Union seeks a unit comprising all production and maintenance employees including "keymen" but excluding clerical employees, technicians, watchmen, guards, gatemen, and all supervisory employees. This is the same unit covered by the contract between the Company

² The Field Examiner reported that the Union submitted 187 membership cards; that the names of 165 persons appearing on the cards were listed on the Company's pay roll of May 21, 1944 and May 22, 1944, which contained the names of approximately 350 employees in the appropriate unit, and that the cards were dated between January 1944 and June 1944. The Field Examiner further reported that the membership cards submitted showed that the Union had substantial representation in each of the units claimed by the Company as appropriate.

and the Brotherhood. The Company contends that this plant-wide unit is unsuitable and urges 5 separate units corresponding to the departmental set up of the Company. The Company has been bargaining with the Brotherhood on a plant-wide basis; the Union has organized the employees of the Company on such basis; and it has substantial representation among the employees of all the departments which the Company contends should be constituted as separate units; no other union, so far as appears from the record, is attempting to organize any of the employees on a less than plant-wide basis;³ and no evidence was adduced, other than the testimony of the works manager, that a unit of all the production and maintenance employees cannot be effectively represented. Under these circumstances, we are of the opinion that a plant-wide unit is appropriate.

We find that all production and maintenance employees of the Company's Gypsum plant, including "keymen,"⁴ but excluding clerical employees, technicians, watchmen, guards, gatemen, 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.⁵

V. THE DETERMINATION OF REPRESENTATIVES

The Company has in its employ at the present time about 20 high school boys who have been hired for the summer. There is no evidence that any of these boys will remain in the Company's employ after school resumes in the fall of the year. The Union contends that the school boys in the Company's employ on the date of the hearing should be permitted to vote. However, it is willing to deny voting privileges to any school boys hired after that date. The Company is opposed to all school boys voting. Since the school boys have been hired for a short period of time, and evidence is lacking to show that any of them will remain in the Company's employ when the summer ends, we find that they do not have sufficient interest in common with the regular employees to be entitled to participate in the election. Accordingly, we shall exclude school boys from the balloting.⁶

³ In August 1943, the International Union of Operating Engineers, wrote a letter to the Company stating that some of the boiler room employees had designated it as their bargaining agent. However, the Engineers did not press its claim and although it received a Notice of Hearing in the instant case, did not appear.

⁴ The parties are agreed, and we find that "keymen" are not supervisors within the customary definition.

⁵ This is substantially the same unit covered by the recently expired contract between the Company and the Brotherhood. There is no dispute between the parties as to the inclusion or exclusion of any of these categories of employees.

⁶ *Matter of Johnson-Handley-Johnson Company*, 51 N. L. R. B. 1282; *Matter of Huntington Furniture Company*, 52 N. L. R. B. 602.

Inasmuch as the Brotherhood was the bargaining representative of the Company's employees until July 20, 1944, we shall accord it a place on the ballot, provided that, it files a request to that effect with the Regional Director within five (5) days from the date of this Decision and Direction of 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with U. S. Gypsum Company, Gypsum, 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 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 Stone and Allied Products Workers of America, Branch #73, affiliated with the Congress of Industrial Organizations, or by United Brotherhood of Gypsum Workers, unaffiliated, for the purposes of collective bargaining, or by neither.

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