

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

Case No. 5-R-1745.—Decided November 27, 1944

Mr. H. D. Decker, of Plasterco, Va., and Mr. K. R. Eckrote, of Chicago, Ill., for the Company.

Mr. J. Carl Bunch, of Kingsport, Tenn., and Mr. James Patrick, of North Holston, Va., 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 District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of United States Gypsum Company, Plasterco, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Marion, Virginia, on November 16, 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. During the course of the hearing the Company moved that all its employees in the armed forces of the United States be permitted to vote in any election that might be directed as a result of this proceeding. The Trial Examiner reserved ruling thereon. The motion is hereby granted as limited in Section V, *infra*. 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

United States Gypsum Company is an Illinois corporation with its principal place of business at Chicago, Illinois. We are here con-

cerned with its plant at Plasterco, Virginia, where it is engaged in the manufacture of plaster board, wall board, wall plaster, and land plaster. The Company purchased raw materials for use at its Plasterco plant during 1943 valued in excess of \$50,000, approximately 80 percent of which was shipped to it from points outside the State of Virginia. During the same period the Company produced products valued in excess of \$50,000, about 60 percent of which was shipped to points outside the State of Virginia,

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

#### II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization 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 its employees because it doubts that the Union represents a majority.

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.<sup>1</sup>

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 Plasterco plant of the Company, including inspectors and laboratory assistants, but excluding commissary and clerical employees, watchmen, technical employees, chemists, engineers, superintendents, foremen, and any other supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns the chief electrician.

The Company employs one person classified as chief electrician. He works under the supervision of the master mechanic and has one helper. He spends his entire working time performing manual duties and his relationship to his helper is that of journeyman to helper rather than supervisor to subordinate. We shall include him in the unit.

We find that all production and maintenance employees at the Plasterco plant of the Company, including inspectors, laboratory assistants,

<sup>1</sup> The Field Examiner reported that the Union presented 94 membership cards. There are approximately 228 employees in the appropriate unit.

and the chief electrician, but excluding commissary and clerical employees, watchmen, technical employees, chemists, engineers, superintendents, foremen, 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 questions 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 Company contends that its employees presently in the armed forces of the United States should be afforded an opportunity to vote. We are not unmindful of the fact that employees on military leave retain their status as employees and, therefore, have a real interest in the choice of a bargaining representative. For this reason, our Direction of Election will provide, as has been the case in the past, that those who appear at the polls in the election shall be allowed to vote if otherwise eligible. However, the Company urges that, to assure an opportunity for all employees in the armed forces to vote, a provision should be included in the Direction of Election requiring the Regional Director to mail ballots to each such employee. We find such a suggestion to be unfeasible for the reasons stated in *Matter of Mine Safety Appliance Co.*, 55 N. L. R. B. 1190. When it is determined that service men have returned to their employment in sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit in which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner, employees in the armed forces, who were unable to cast a vote, will be afforded an opportunity to affirm or change the bargaining agent selected in their absence.

#### 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 United States

Gypsum Company, Plasterco, Virginia, 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 Fifth 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 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 District 50, United Mine Workers of America, for the purposes of collective bargaining.