

In the Matter of FISCHER LIME AND CEMENT COMPANY and LOCAL INDUSTRIAL UNION #1356, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 15-R-1276.—Decided February 22, 1945

Messrs. Hamilton E. Little and L. T. McCourt, of Memphis, Tenn., for the Company.

Mr. Earl A. Crowder, of Memphis, Tenn., 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 Local Industrial Union #1356, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Fischer Lime and Cement Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board, provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at Memphis, Tennessee, on February 6, 1945. 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. 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

Fischer Lime and Cement Company is a Tennessee corporation with its principal offices at Memphis, Tennessee, where it is engaged in retail and wholesale buying and selling of building materials. During 1944

the Company purchased materials valued at about \$2,500,000, about 70 percent of which was shipped to it from points outside the State of Tennessee. During the same period it distributed about 35 percent of said materials in States other than the State of Tennessee.

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

II. THE ORGANIZATION INVOLVED

Local Industrial Union #1356 is a labor organization affiliated with the Congress of Industrial Organizations, 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 until such time as the Union is certified by the Board.

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.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

We find, in accordance with a stipulation of the parties, that all employees at the 269 Walnut Street, Memphis, Tennessee, plant of the Company, excluding office and clerical employees 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 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

¹ The Field Examiner reported that the Union presented 42 authorization cards. There are 77 persons in the appropriate unit.

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 Fischer Lime and Cement Company, Memphis, Tennessee, 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 Fifteenth 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 Local Industrial Union #1356, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.