

In the Matter of ALABAMA BRICK & TILE COMPANY, INC., EMPLOYER
and AMERICAN FEDERATION OF LABOR, PETITIONER

Case No. 10-RC-344.—Decided December 20, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing in this case was held at Decatur, Alabama, on October 12, 1948, before Lamar E. Kemp, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in this case, the National Labor Relations Board² makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Employer is an Alabama corporation having its sole office and place of business at Decatur, Alabama. It is engaged in the manufacture of brick and tile. The principal raw material which it uses is clay, dug from its own clay beds at Whiteside, Alabama, on the Tennessee River, and hauled to the brick works in Decatur on the

¹ Prior to the hearing, the Employer filed a motion to dismiss the proceeding for lack of jurisdiction, alleging (1) that it is not engaged in interstate commerce; (2) that the showing of interest made by the petitioning union is insufficient; and (3) that the petition fails to show any local union of the Petitioner in Decatur, Alabama. For the reasons herein set forth, the motion is denied.

With respect to the sufficiency of the petitioning union's showing, the Board has repeatedly held that this question is purely an administrative matter not subject to collateral attack. *Matter of The Standard Printing Company, Inc.*, 80 N. L. R. B. 338. The absence of a local union does not afford grounds for dismissing the petition, in the absence of any indication that the petitioning union will not adequately represent the employees of the Employer, where no question of compliance with Sections 9 (f), (g), and (h) of the Act is involved. *Matter of Gulf Oil Corporation*, 79 N. L. R. B. 1433; *Matter of Lane Wells Company*, 79 N. L. R. B. 252; *Matter of Granite Textile Mills, Inc.*, 76 N. L. R. B. 613.

² Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Murdock].

Employer's own barges. During the 12-month period from September 1, 1947, to August 30, 1948, it used clay having an estimated cost of \$12,280.80.³ In that same period, it used coal valued at \$36,108.30, produced and obtained in Alabama; gasoline and fuel oil valued at \$3,381.13, produced outside the State of Alabama but purchased at retail from local dealers; and electric power costing about \$3,000, generated principally at Wilson Dam, Alabama, a part of the TVA power system. It also purchased various supplies and repair parts; the total value of those purchased in Alabama was \$4,016.94, and of those purchased outside the State, \$3,498.74.

The Employer's total sales during the same 12-month period amounted to \$256,449.36. This figure includes sales of building tile and other building materials purchased in Alabama for resale, of which \$64,369.46 worth were sold within the State, and \$1,214.15 outside the State. Sales of products manufactured by the Employer and sold to out-of-State purchasers amounted to \$30,225.73.⁴ The rest of the Employer's sales were made to building supply dealers, building contractors and other customers in the State of Alabama.

We find, contrary to the contention of the Employer, that its operations affect commerce within the meaning of the Act.⁵

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization claiming to represent employees of the Employer.⁶

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.⁷

³ Based on an estimated cost of 60 cents per ton of raw clay delivered at the plant in Decatur.

⁴ Some of the brick and tile sold to out-of-State purchasers was shipped by rail, some was hauled by trucks owned by the brother of the Employer's president, and a small quantity was picked up by the customers themselves at the plant.

⁵ See *Matter of Atlanta Brick & Tile Co.*, 79 N. L. R. B. 756; *Matter of Central Sash and Door Company*, 77 N. L. R. B. 418.

⁶ Notwithstanding its reliance upon the absence of a local union as one of the grounds for its motion to dismiss (see footnote 1, *supra*), the Employer stipulated to this at the hearing.

⁷ At the hearing the Employer suggested that the Petitioner had not made timely request for recognition by the Employer, since its letter requesting recognition was not received by the Employer until after the petition in this case had been filed. In view of the fact that the record shows a refusal by the Employer to recognize the Petitioner as bargaining representative of its employees until it is certified by the National Labor Relations Board, the failure of Petitioner to request recognition prior to filing its petition does not affect the power of the Board to entertain this proceeding. *Matter of Advance Pattern Company*, 80 N. L. R. B. 29, reconsidering and vacating *Matter of Advance Pattern Company*, 79 N. L. R. B. 209.

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner has requested a unit consisting of all production and boat workers and river crew at the Decatur plant, excluding the manager,⁸ office personnel, mill superintendent, all guards,⁹ professional employees and supervisors as defined in the National Labor Relations Act as amended.

The Employer questioned the appropriateness of including in the unit certain employees claimed by the Petitioner.

The boat crew: This consists of two employees: the pilot and machine operator and the deckhand and locomotive operator. Their duties consist of running the barge in which the raw clay is transported to the plant, and operating the dragline, the locomotive and other machinery by means of which the clay is taken from the bank and loaded on the barge.

The Employer testified at the hearing that the operations of these two employees were integrated with those of the plant, and that the plant could not continue long in operation if the work of these employees should be interrupted. The record indicates a sufficient community of interest between these employees and those engaged in production. Accordingly, we shall include these employees in the unit hereinafter found appropriate.¹⁰

James Stone: The Employer would exclude this employee from the unit as a supervisor. Stone's work consists of pitching brick from the kiln to the wheelers, directing the wheelers to the proper part of the kiln to pick up their loads, keeping count of the loads of brick and checking the time of the wheelers. He turns in his own time when he turns in theirs. He is paid at piece rates, but his piece rates are higher than those of the wheelers. The record shows that Stone has never made any recommendations as to discharging any employees. The Employer's president, W. B. Neher, testified that if Stone were to make such recommendations, he would take no action on them without

⁸ The manager of the Employer is its president, W. B. Neher. His son, Herbert Neher, is employed by the Employer in a general maintenance capacity, and the record indicates that he may be called on to perform some managerial functions. In accordance with the agreement of the parties at the hearing, we shall exclude Herbert Neher from the unit, principally on the ground of his close family relationship with the management. *Matter of Associated Electronic Enterprises, Inc.*, 80 N. L. R. B. 295.

⁹ The parties agreed at the hearing to exclude Luther Finchum, the night watchman. Under these circumstances we find it unnecessary to decide whether this employee is a guard within the meaning of the Act.

¹⁰ See *Matter of Farmville Manufacturing Company*, 76 N. L. R. B. 237.

first consulting his son, Herbert Neher. The record indicates further that Stone has never made any recommendations as to the job assignments of employees without first consulting the superintendent of the plant. We find that Stone is not a supervisor within the meaning of the Act, and shall include him in the unit hereinafter found appropriate.

We find that all production workers at the Employer's Decatur plant, including the boat crew, but excluding the manager, the mill superintendent, office personnel, guards and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Alabama Brick & Tile Company, Inc., Decatur, Alabama, 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 Tenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, 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, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by the American Federation of Labor for the purpose of collective bargaining.