MARQUETTE CEMENT MANUFACTURING COMPANY *and* UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, AF OF L, PETITIONER. *Case No. 32-RC-309. April 17, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. 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.

The Employer and the Intervenor, United Stone and Allied Products Workers of America, CIO, contend that the contract between the Employer and Local No. 69 of the Intervenor, covering the period June 1, 1950, to June 1, 1952, is a bar to this proceeding. The Petitioner contends that Local No. 69 is no longer in existence.

On November 16, 1950, at a regular meeting of Local No. 69, the 38 officers and members present voted unanimously to disaffiliate from the Intervenor and to affiliate with the Petitioner. On December 4, 1950, pursuant to resolutions adopted at meetings on November 16 and November 22, 1950, a letter signed by 53 former officers and members of Local No. 69 was mailed to the international secretary of the Intervenor advising that they had resigned their membership in Local No. 69. On the same day, a letter was mailed to the Employer which was similarly signed, notifying the Employer to the same effect, and also directing the Employer to discontinue the checkoff of union dues.[1] In accordance with a resolution adopted at a meeting on December 15, 1950,[2] the funds and most of the books of Local No. 69 were turned over to the Intervenor. On January 22, 1951, the same individuals who had served as officers of Local No. 69 were elected to identical offices in Local 312 of the Petitioner. Local 312 holds meetings twice

[1] The letters were dated November 25, 1950.

[2] On December 15, 1950, the employees requested a wage increase from the Employer. Because of the question concerning representation involved herein, this request was made by a petition individually signed by 53 employees.

a month. No meetings of Local No. 69 have been held since the formation of Local 312.

It does not appear that Local No. 69 contained any members who were not employees of the Employer at the plant herein involved. There are approximately 60 employees in the plant, of whom approximately 50 are in the agreed appropriate unit. As previously noted, 38 members voted at the meeting of November 16, 1950, to disaffiliate from the Intervenor and to affiliate with the Petitioner. We conclude, therefore, that a majority of the members of Local No. 69 voted for such action. Furthermore, it appears that there are at present no officers or members of Local No. 69 and that all employees in the plant are members of the Petitioner.

In the light of the foregoing events, and on the basis of the entire record, we find that the identity of the bargaining representative of the Employer's employees has become a matter of such confusion that the relationship between the Employer and the contracting Union can no longer be said to promote stability in industrial relations. As the Board recently stated,[3] to treat the contract as a bar in such circumstances would seriously impede rather than encourage the practice of collective bargaining which the Act was designed to foster and protect. We are of the opinion, therefore, that the conflicting claims to representation of the two labor organizations involved can best be resolved by an election.[4]

4. In accordance with the agreement of the parties, we find that all production and maintenance employees of the Employer at its Memphis, Tennessee, sand and gravel plant, excluding office and clerical employees, technical engineers, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

[3] *Boston Machine Works Company*, 89 NLRB 59.

[4] *Boston Machine Works Company, supra.* The Intervenor's motion to dismiss the proceeding is hereby denied.

THE RADIO OFFICERS' UNION OF THE COMMERCIAL TELEGRAPHERS UNION, AFL *and* WILLARD CHRISTIAN FOWLER. *Case No. 2–CB–91. April 18, 1951*

Decision and Order

On July 24, 1950, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that