

In the Matter of ALABAMA MARBLE COMPANY, EMPLOYER and AMERICAN FEDERATION OF LABOR, PETITIONER

*Case No. 10-R-2034.—Decided October 4, 1946*

*Mr. C. W. Stringer*, of Talladega, Ala., for the Employer.  
*Mr. Walter L. Mitchell*, of Birmingham, Ala., for the Petitioner.  
*Mr. A. Sumner Lawrence*, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

Upon a petition duly filed, the National Labor Relations Board conducted on August 8, 1946, a prehearing election, pursuant to Article III, Section 3, of the Board's Rules and Regulations—Series 3, as amended, then in effect, among employees in the unit hereinafter found appropriate, to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the election a Tally of Ballots was furnished the parties. The Tally shows that there were approximately 127 eligible voters and that 119 of these eligible voters cast ballots, of which 69 were for the Petitioner, 46 were against the Petitioner, and 4 were challenged.

Thereafter, pursuant to Article III, Section 10, of the Rules and Regulations aforesaid, the Board provided for an appropriate hearing upon due notice before Albert D. Maynard, hearing officer. The hearing was held at Sylacauga, Alabama, on August 27, 1946. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Alabama Marble Company, an Alabama corporation, has its office and only place of business at Gantts Quarry, Alabama, where it is engaged in the quarrying, finishing and sale of marble of all kinds. During the year 1945, the Employer purchased in the course of its

operations raw materials, including marble, valued in excess of \$20,000, of which amount \$10,000 worth of materials was obtained from points outside the State of Alabama. During the same period, the Employer manufactured finished products valued in excess of \$119,000, of which approximately 50 percent was shipped to points outside the State of Alabama. The Employer's business during the year 1946 has been approximately on a *pro rata* basis the same as it was during the year 1945.

We find, contrary to the contention of the Employer, that it is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

## II. THE ORGANIZATION INVOLVED

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

## 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.

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

## IV. THE APPROPRIATE UNIT

The Petitioner seeks a comprehensive unit comprising all employees of the Employer, including watchmen, but excluding office and clerical employees, draftsmen, executives, and supervisory employees. The Employer takes no affirmative position on the appropriate unit, but disagrees with the Petitioner in regard to watchmen, whom the Petitioner desires to have included within the unit. In addition thereto, there is a question as to the status of certain named individuals<sup>2</sup> whom the Petitioner contends should be excluded as supervisory employees.

With regard to the question concerning watchmen, the evidence discloses that the Employer has in its employ four watchmen, of whom three are stationed at the Employer's power plant, where they perform the usual duties of watchmen in addition to certain production work. The remaining watchman spends the greater part of his time at the Employer's lake, guarding the Employer's lake and quarry which are

<sup>1</sup> The further contention of the Employer that the Board must first formally determine that the Employer is engaged in commerce before holding an election is without merit. Cf. *Matter of E. R. Squibb & Sons*, 67 N. L. R. B. 557.

<sup>2</sup> J. F. McMullan, Decker McCluskey, Thomas Grady Dison, and Adrien D. Summers.

located at some distance from the power plant. This employee is, however, at times transferred to the power plant, on which occasions he performs the same duties as those ordinarily performed by the watchmen regularly stationed at the power plant. Although the record reveals that all four watchmen are armed, and that the watchman stationed at the lake is also deputized, there is nothing to indicate that any of the watchmen are militarized or charged with duties of a monitorial nature as regards other employees of the Employer. We are of the opinion that the watchmen herein concerned have substantial interests in common with the employees in the unit hereinafter found appropriate. Accordingly, we shall include them in such unit.

With regard to the named individuals whom the Petitioner claims should be excluded from the unit as supervisory employees, the record discloses that in the cases of *McMullan*, *McCluskey*, and *Dison*, respectively, all have direct supervision over other employees and are authorized to make recommendations with respect to the hire and discharge of such employees. Since it appears that McMullan, McCluskey, and Dison are supervisory employees within the meaning of our usual definition, we shall exclude them from the appropriate unit.

So far as the status of *Adrien D. Summers* is concerned, it appears that this employee has no employees regularly under his supervision; that he spends 80 percent of his time as an expeditor in close association with the production employees; and that he is unable, in the performance of his alleged supervisory duties, to affect the status of other employees of the Employer. In view of the foregoing facts, we conclude that Summers is not a supervisory employee within the meaning of our definition thereof. Accordingly, we shall include him within the unit.

We find that all employees of the Employer at Gantts Quarry, Alabama, including Adrien D. Summers and watchmen, but excluding office and clerical employees, draftsmen, executives, 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,<sup>3</sup> 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

At the prehearing election, the Petitioner challenged the ballots of *J. F. McMullan*, *Decker McCluskey*, *Thomas Grady Dison*, and *Adrien D. Summers*, upon the ground that they are supervisory employees. In view of our determinations in Section IV, *supra*, it is clear that only Summers was eligible to cast a ballot. Since, however, this ballot can-

<sup>3</sup> Excluded as falling within this definition are J. F. McMullan, Decker McCluskey, and Thomas Grady Dison.

not possibly affect the results of the election, we shall not direct that it be opened and counted.

The results of the election held prior to the hearing show that the Petitioner has secured a majority of the valid votes cast, including the one challenged ballot which is valid. Under the circumstances, we shall certify the Petitioner as the collective bargaining representative of the employees in the appropriate unit.

### CERTIFICATION OF REPRESENTATIVES

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 Sections 203.54 and 203.55, of National Labor Relations Board Rules and Regulations—Series 4.

IT IS HEREBY CERTIFIED that American Federation of Labor has been designated and selected by a majority of all employees of Alabama Marble Company at Gantts Quarry, Alabama, in the unit found appropriate in Section IV, above, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Certification of Representatives.