

In the Matter of THE GLOBE BRICK COMPANY and UNITED CONSTRUCTION WORKERS, AFFILIATED WITH UNITED MINE WORKERS OF AMERICA

Case No. 6-R-1240.—Decided January 17, 1946

*Thorp, Bostwick, Reed & Armstrong*, by *Mr. Kenneth G. Jackson*, of Pittsburgh, Pa., for the Company.

*Mr. Joseph DiStefano*, of Bellaire, Ohio, and *Mr. A. B. Sparks*, of Columbus, Ohio, for the Union.

*Miss Katharine Loomis*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers, affiliated with the United Mine Workers of America, herein called the Union, alleging that a question affecting commerce has arisen concerning the representation of employees of The Globe Brick Company, Newell, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. The hearing was held at Chester, West Virginia, on October 10, 1945. The Company and the Union appeared and participated.<sup>1</sup> All parties 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.

At the hearing and in its brief the Company moved to dismiss the petition on the ground that the unit proposed by the Union is not appropriate for the purposes of collective bargaining. For the reasons set forth in Section IV, *infra*, the motion is hereby denied.

Upon the entire record in the case, the Board makes the following:

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<sup>1</sup> United Brick & Clay Workers of America, A F of L, herein called the A F of L. was served with notice of hearing but did not appear

65 N. L. R. B., No. 87.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

The Globe Brick Company, a West Virginia corporation, operates a clay mine and a plant for the manufacture of fire clay ladle brick at Kenilworth, near Newell, West Virginia. During the past year the Company's purchases of raw materials were in excess of \$100,000, of which approximately 30 percent was purchased outside West Virginia. During the same period the Company sold finished products valued at more than \$100,000, of which approximately 94 percent was shipped to points outside West Virginia.

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

## II. THE ORGANIZATION INVOLVED

United Construction Workers is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's employees working in its clay mine until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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 requests a unit of employees working in the Company's clay mine, including drillers, tampers, motormen, clay loaders, laborers, trackmen, timbermen, trip-riders, blacksmith, and pumper, but excluding office and clerical employees and the mine superintendent. The Company agrees that the categories of employees sought by the Union should be included, but contends that the unit should encompass plant as well as mine employees.

<sup>2</sup> The Field Examiner reported that the Union submitted 19 application cards and that the cards are dated during June and July 1945, and 1 card is dated January 1945. There are approximately 41 employees in the appropriate unit

In a prior proceeding concerning the Company's employees,<sup>3</sup> the A. F. of L. sought the identical unit now petitioned for by the Union, and the Company took the same position it presently advances. Nevertheless, in its Decision and Direction of Election in that case, the Board said:

The mine is located on a hill approximately 1,500 feet from the brick plant. Clay from the mine is carried by chute to a crusher and thence by conveyor belt to the plant for manufacture into brick. Operation of the plant depends upon the receipt of clay from the mine, and operation of the mine depends upon a demand for clay from the plant. Obviously the entire operation of mining and manufacturing is complementary and well integrated. However, the plant may operate by using clay trucked to the plant from another mine and the plant was so supplied for a short period recently. Conversely the clay from the mine may be sold and transported for use in another plant. In this aspect the mine and the plant are functional units not necessarily dependent one upon the other. The employees at the mine are under separate supervision from those at the plant and in recognition of the hazards attending their work receive higher wages. There is no practice of transferring employees between the plant and mine and the skills of the employees in the mine are dissimilar to those possessed by employees in the plant. The A. F. of L. does not assert that under other circumstances the plant and mine unit would be inappropriate and agrees that in the industry the employees in plant and mine are frequently represented in one bargaining unit.

The Company asserts that the employees of its several competitors are organized in each case as one unit and that to permit separate organization here would subject the Company to disadvantages not suffered by others in the industry. No evidence was offered in support of this assertion and the statement itself is not probative. . . .

. . . We shall not require the employees in the mine presently to forego the benefits of collective bargaining until the employees in both plant and mine are organized, when, as here, there is no immediate prospect of such over-all organization. Accordingly, we shall find that a unit, coinciding with the extent of effective organization, confined to the employees working in the mine is appropriate for the purposes of collective bargaining.

The Company asserts that the record in this case reveals facts in support of its position not brought to the Board's attention in the

<sup>3</sup> 51 N. L. R. B. 1096.

prior proceeding. The Company's president testified that brick-making operations are entirely dependent on the supply of clay from the mine and that substantially all the clay so mined is used in these operations.<sup>4</sup> The treasurer of the Company testified that water and electricity are supplied to the mine from facilities at the plant. Although these facts are pertinent in that they stress the integration of mine and plant operations, we have held in previous cases, as we did in our prior decision concerning the Company's employees, that, under certain circumstances, mine and plant employees may be separately represented despite integration between the two types of operations.<sup>5</sup> Our decision in the prior proceeding indicates that the A. F. of L. was unsuccessful in organizing the plant employees. Moreover, we note that that organization lost the election in the unit limited to mine employees which we there found appropriate and that the Union has limited its organizational efforts to these employees. Under these circumstances we are persuaded that the unit sought by the Union is appropriate.<sup>6</sup>

We find that all employees of the Company working in the clay mine at Kenilworth, near Newell, West Virginia,<sup>7</sup> including drillers, tampers, motormen, clay loaders, laborers, trackmen, timbermen,

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<sup>4</sup> This witness testified that, shortly before the hearing in the prior case, the Company had obtained some clay from another mine. However, this clay was found to be unsatisfactory for the Company's purposes and it has since depended solely on clay from its own mine.

<sup>5</sup> See *Matter of The Cambria Clay Products Company*, 42 N. L. R. B. 980, and 45 N. L. R. B. 1069, *Matter of Kentucky Fluorspar Company*, 52 N. L. R. B. 227.

Other evidence not introduced at the prior proceeding included testimony of company witnesses that, under the West Virginia Workmen's Compensation Law, the employees of the plant and mine are grouped together for purposes of fixing rates of compensation and participation in the Workmen's Compensation Fund, and that the safety inspector of the West Virginia Department of Mines inspects both the mine and the plant. The criteria of these State agencies are necessarily different from those of this Board, which operates under a specific statute.

<sup>6</sup> The Company argues that the fact that the A. F. of L. lost the election in the unit limited to mine employees indicates the preference of these employees for a larger unit. It cites *Matter of Pacific Greyhound Lines*, 9 N. L. R. B. 557, as supporting this contention. There, the Board, in commenting on the results of a self-determination election pursuant to a prior Board finding that either of two units might be appropriate for that company's bus drivers (4 N. L. R. B. 520), stated that "The votes disclosed that only a minority of the bus drivers in the election favored a unit limited to drivers, a fact which was taken by the Board as showing that a majority favored a larger unit." Since in the prior proceeding concerning the Company's employees they were not asked in effect to express their desires in regard to the unit, the results of that election can in no way indicate their preference for a larger unit. On the contrary, the A. F. of L.'s lack of success in organizing the plant employees and its loss of the election among employees of the mine are, as indicated above, circumstances we have taken into consideration in our finding that a unit limited to mine employees is appropriate. Cf. *Matter of Kentucky Fluorspar Company*, *supra*; *Matter of Standard Overall Company*, 53 N. L. R. B. 960; *Matter of Mine Safety Appliance Co.*, 55 N. L. R. B. 1190; *Matter of Ladish Drop Forge Company*, 57 N. L. R. B. 1468; and *Matter of Frank Kent Manufacturing Company*, 61 N. L. R. B. 572.

<sup>7</sup> The parties, after some discussion as to whether Frank Juaszczak, Lawrence Kidder, and Paul Draa possessed supervisory status, agreed that these employees be included in the unit. It is clear that they are not supervisory within the meaning of the Board's customary definition, and are included as non-supervisory employees.

trip-riders, blacksmith and pumper, but excluding office and clerical employees, plant employees, the mine superintendent, and all 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 question concerning representation which has arisen be resolved by an election by secret ballot among 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.

#### 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 The Globe Brick Company, Newell, West 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 Sixth 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 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, to determine whether or not they desire to be represented by United Construction Workers, affiliated with United Mine Workers of America, for the purposes of collective bargaining.