

In the Matter of UNITED STATES GYPSUM COMPANY and UNITED MINE
WORKERS OF AMERICA, DISTRICT 50

Case No. 19-R-1639.—Decided January 22, 1946

Mr. Vernon E. Coffman, of Heath, Mont., for the Company.

Mr. W. A. Boyle, of Billings, Mont., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Mine Workers of America, District 50, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of United States Gypsum Company,¹ Heath, Montana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Lewistown, Montana, on November 27, 1945. The Company and the Union appeared and participated. All parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.² The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

United States Gypsum Company, an Illinois corporation with its principal place of business at Chicago, Illinois, is engaged in the

¹The parties stipulated that all formal papers herein be amended to show the name of the Company as indicated in the caption and body of the decision.

²United Cement, Lime and Gypsum Workers International Union, Local 156, AFL, was served with Notice of Hearing, but did not enter appearance at the hearing

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manufacture of wall board, wall plaster, and agricultural gypsum at its plant in Heath, Montana, which is the only plant involved in this proceeding. During 1945, the Company purchased raw material for its Heath, Montana, plant valued in excess of \$20,000, all of which was shipped to it from points outside the State of Montana. During the same period the Company produced goods valued in excess of \$100,000, of which in excess of 90 percent was shipped to points outside the State of Montana.

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

II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District 50, is a labor organization 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 the Union is 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.³

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 seeks a unit of all production and maintenance employees at the Company's Heath, Montana, plant, excluding all clerical, supervisory, and confidential personnel. The Company contends that the night mine foreman, the packing foreman, the board loading foreman, the assistant board loading foreman, board shift foremen, the assistant master mechanic, the plant electrician, all of whom the Union would include, should be excluded from the unit because they are supervisory employees. Also, the Company would exclude testers and inspectors, contending that their interests and working conditions are different from those of the production and maintenance employees, whereas the Union would include these employees in the unit.

³ The Field Examiner reported that the Union submitted 93 authorization cards, and that there are approximately 108 employees in the alleged appropriate unit.

Night mine foreman, packing foreman,⁴ board loading foreman, assistant board loading foreman, and board shift foremen, the assistant master mechanic, and plant electrician

These employees supervise the work of from 1 to 15 persons. They train and instruct new employees and may make recommendations to the superintendent concerning the workers under their supervision. In addition, their rate of pay is higher than that of their subordinates. As indicated above, there are about 108 employees in the unit sought. Yet, were we to include the 7 disputed categories, this would indicate that only 3 employees, the superintendent, the works manager, and the master mechanic are supervisory. Considering the size of the unit, and the other circumstances of the case, we are of the opinion that the 7 disputed categories are vested with sufficient indicia of supervisory authority to warrant their exclusion. We shall exclude them.

Inspectors: Inspectors evaluate the quality of the products manufactured. They have authority to reject substandard materials. However, they do not possess the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. They perform their work in close proximity to that of the production workers. They also spend a portion of their time doing similar work to that performed by the production employees. They, too, are hourly paid. We conclude that the inspectors have interests, duties, and working conditions which closely ally them with the hourly rated production and maintenance workers. Accordingly, we shall include the inspectors in the unit.⁵

Testers: The testers perform physical and chemical tests on all of the Company's products. They work in the laboratory which is separate and removed from where the production and maintenance employees work, and are under separate supervision. There is no interchange of employees between the laboratory and the production and maintenance departments. Moreover, it appears that these employees' functions are of a technical nature. We shall exclude them from the unit.

We find that all production and maintenance employees at the Company's Heath, Montana, plant, including inspectors, but excluding testers, clerical and office employees, confidential personnel, mine

⁴This position was temporarily vacant at the time of the hearing. The Company's manager testified, however, as to the duties of this job, and stated that this position would be filled in the near future.

⁵See *Matter of Westinghouse Electric and Manufacturing Company*, 50 N. L. R. B. 427, *Matter of Sneed and Company*, 55 N. L. R. B. 1206; and *Matter of Brad Foote Gear Works, Inc.*, 60 N. L. R. B. 97.

superintendent, mill superintendent, board superintendent, master mechanic, night mine foreman, packing foreman, board loading foreman, assistant board loading foreman, board shift foremen, assistant master mechanic, plant electrician, 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

The Company urges that its employees presently in the armed forces should be permitted to vote by mail. The record indicates that at the time of the hearing there were 65 employees on military leave. As noted in footnote 3, *supra*, there are about 108 employees in the unit herein found appropriate. We are of the opinion that the facts in this case do not differ substantially from those in *Matter of South West Pennsylvania Pipe Lines*.⁶ Accordingly, we shall grant the Company's request, subject to the provisions hereinafter mentioned.

We will direct that the question concerning representation 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. In this case, the Regional Director shall mail ballots to employees within the appropriate unit on military leave, *provided* one or more of the parties hereto, within seven (7) days from the issuance of the Direction of Election, files with the Regional Director a list containing the names, most recent addresses, and work classifications of such employees. The Regional Director shall open and count the ballots cast by mail by employees on military leave, *provided* that such ballots must be returned to and received at the Regional Office within thirty (30) days from the date they are mailed to the employees by the Regional Director.⁷

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

⁶ 64 N L R. B. 1384.

⁷ A free interchange between the interested parties of information on the addresses and work categories of the employees to be voted by mail will be necessary in order to avoid challenges and post-election objections. Accordingly, the Board will make available to all interested parties any information of this nature furnished it by any other party. In the event that the parties should send the absentee voters any information or literature bearing directly or indirectly on the pending election, copies of all such documents should be simultaneously filed with the Regional Office for inspection by or transmittal to the other parties. However, acceptance or transmittal of such literature by the Board's office is not to be construed as conferring immunity on the filing party in the event that objections are later interposed concerning its content. The usual principles will apply.

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 United States Gypsum Company, Heath, Montana, an election by secret ballot shall be conducted as early as possible, but not later than forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the Nineteenth 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 the 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, 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 United Mine Workers of America, District 50, for the purposes of collective bargaining.