

In the Matter of UNITED STATES GYPSUM COMPANY and UNITED GAS,
COKE AND CHEMICAL WORKERS OF AMERICA, C. I. O.

Case No. 3-R-1104.—Decided February 26, 1946

Mr. Harold D. Burgess, of Chicago, Ill., for the Company.

Mr. Raymond R. Bloom, of Niagara Falls, N. Y., for the Union.

Mr. Frederick D. Vincent, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Gas, Coke and Chemical Workers Union, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of United States Gypsum Company, North Tonawanda, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank X. Helgesen, Trial Examiner. The hearing was held at Buffalo, New York, on November 9, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company moved at the hearing that all employees of the Company presently in military service be afforded an opportunity to vote, either in person, or by mail ballot. The Trial Examiner reserved ruling upon this motion for the Board. For reasons set forth in Section V, *infra*, the motion is granted. 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,¹ the Board makes the following:

¹ After the hearing the Company submitted an offer of proof relating to the issue of the mail balloting of employees in the armed forces. The Union stipulated that this offer could be treated by the Board as though made during the course of the hearing. We accept the offer insofar as it represents the claims of the Company concerning the number of employees on military leave and other pertinent matters.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

United States Gypsum Company, an Illinois corporation, operates 53 plants, mills, and warehouses, located throughout the United States. The only employees involved in these proceedings are employees of the Company's plant located at North Tonawanda, New York, where the Company is engaged in the manufacture of roofing materials. For the calendar year 1944, the Company purchased raw materials, valued in excess of \$100,000, from places outside the State of New York, for use at the North Tonawanda plant. This figure represents 50 percent of all raw materials purchased during this period. Fifty percent of all sales made during the same period was shipped out of the State of New York.

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

II. THE ORGANIZATION INVOLVED

United Gas, Coke and Chemical Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, 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 its employees 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.²

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 contends that a unit comprised of all production and maintenance employees, including testers, but excluding office and clerical employees and supervisory employees, is appropriate. The Company agrees, but seeks the exclusion of testers.

² The Field Examiner reported that the Union submitted 32 cards bearing the names of 32 employees listed on the Company's pay roll of October 14, 1945, and that the cards are dated October 1945.

There are approximately 35 employees in the appropriate unit.

Testers: The testers perform technical tests on the products of the Company and the products of competitors. The greater part of their time is spent in a laboratory, and they report directly to the plant superintendent, whereas the production and maintenance employees report to the shop foreman. Inasmuch as their interests as technical employees are separate and distinct from those of the production and maintenance employees, we shall exclude the testers.³

We find that all production and maintenance employees of the North Tonawanda plant of the Company, excluding testers, office and clerical employees, 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, 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 requests that its employees absent on military leave be afforded an opportunity to cast ballots by mail in any election which the Board may direct. The Union opposes on the ground of delay in the conduct of the election. It appears that there are about 10 employees in the armed forces of the United States. As already indicated, the appropriate unit contains approximately 35 employees. 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*.⁴ Accordingly, subject to the conditions hereinafter mentioned, we shall grant the Company's request.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the 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.⁵ 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 after receipt 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 by the Regional Director

³ See *Matter of United States Gypsum Company*, 65 N. L. R. B. 575.

⁴ 64 N. L. R. B. 1384

⁵ The Union's request that it be designated on the ballot as its name is set forth in the Direction is hereby granted.

within thirty (30) days from the date they are mailed to such employees by the Regional Director.⁶

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 United States Gypsum Company, North Tonawanda, New York, 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 Third 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 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, 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 Local 277 of the United Gas, Coke and Chemical Workers of America, C. I. O., for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

⁶ 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.