

determination of this dispute, and whether or not they will refrain from forcing or requiring the Company, by means proscribed in Section 8 (b) (4) (D) of the Act, to assign particular work to members of Local 106 rather than to employees of the Company who are not members of Local 106.

MEMBERS RODGERS and FANNING took no part in the consideration of the above Decision and Determination of Dispute.

United States Gypsum Company, Petitioner and Local Union 7-278, Oil, Chemical and Atomic Workers International Union, AFL-CIO. Cases Nos. 13-RM-344 and 13-RM-345. February 10, 1958

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert G Mayberry, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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 Rodgers, Bean, and Jenkins].

Upon the entire record in this case the Board finds:

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

2. Local Union 7-278, Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called the Union, is a labor organization and claims to represent 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.

4. The Employer manufactures gypsum, cement and asbestos products at its East Chicago, Indiana, plant, which is the only plant involved herein.

In Case No. 13-RM-345 the Employer seeks a determination of bargaining representative in a unit of production and maintenance

¹At the hearing the Union moved to dismiss the petitions on the ground that the unit questions involved herein were determined in *United States Gypsum Company*, 105 NLRB 931 and 107 NLRB 122. We find no merit in the Union's contention. The Employer, in a letter to the Union prior to filing the petitions herein, advised the Union that it doubted the Union represented a majority of the employees in the appropriate units, and was filing an employer's petition with the Board for an election to determine the Union's representative status. At the hearing the Employer again stated that it doubted the Union's majority status. In such circumstances, as the Employer filed petitions for a determination of the Union's majority representative status, we deny the Union's motion to dismiss the petition.

employees. The Union would include and the Employer would exclude as supervisors the board machine operators, glatex machine operators, shingle wet machine operators, head takeoff men, and the board lead mechanic who are presently included in the Board certified production and maintenance unit.²

In Case No. 13-RM-344 the Employer seeks a determination of bargaining representatives in a unit of testers.³ The Employer would include in the unit the inspectors, who are presently included in the existing production and maintenance unit.⁴ The Union contends that the inspectors should remain part of the production and maintenance employees.

Board machine operators, glatex machine operators, shingle wet machine operators, and head takeoff men: The Employer employs a board machine operator, glatex machine operator, shingle wet machine operator, and a head takeoff man, herein referred to as key operators, on each of its three shifts, who are under the direct supervision of their respective shift foremen. They work on complex machines with crews varying in size from 4 to 6 employees. Although the Employer's witnesses testified that the key operators may effectively recommend the change of employees' status and responsibility and direct employees, the record shows that promotions usually depend on seniority, recommendations for disciplinary action are subject to review, the key operators merely relay orders of the foremen, and grievances are handled by the foremen and higher echelon personnel. In a previous proceeding the Board concluded that the key operators involved herein were not supervisors within the meaning of the Act, finding on the record therein, that they did not effectively recommend the change of employee status and they did not responsibly direct employees.⁵ In the present record, the Employer contends that as a result of the increase in production and variety of products since the prior hearing there has been an increase in supervisory authority and responsibilities. However, we find insufficient change in the key operators' duties and functions to warrant finding that they are supervisors. In view of these circumstances we find that the board machine operators, glatex machine operators, head takeoff men, and shingle wet machine operators are not supervisors within the meaning of the Act and shall include them in the unit of production and maintenance employees.⁶

² The Union was certified as the exclusive bargaining representative of the Employer's production and maintenance employees on December 16, 1953, following a Board-directed election in *United States Gypsum Company*, 105 NLRB 931.

³ The Union was certified as the exclusive bargaining representative of the Employer's testers following a Board-directed election in *United States Gypsum Company*, 79 NLRB 194.

⁴ In *United States Gypsum Company*, 79 NLRB 194, the Board included the inspectors in the production and maintenance unit.

⁵ *United States Gypsum Company*, 105 NLRB 931 and 107 NLRB 122.

⁶ *United States Gypsum Company*, 118 NLRB 20.

Board lead mechanic: The Employer employs one board lead mechanic who works the day shift only in the engineering department under the supervision of the board maintenance foreman, to whom he is responsible for all of the maintenance and repair of all mechanical equipment in the board plant.⁷ The record herein reveals that he usually works with a crew of 4 mechanics which may be increased when there is a major breakdown by as many as 6 mechanics. He assigns the crew members to various maintenance jobs, and determines who is to work overtime, or on holidays. The record shows that he has effectively recommended transfers and promotions of employees. The record also shows that the board lead mechanic substitutes for the board maintenance foreman an admitted supervisor, 2 days 1 week and 1 day the next week and when he is on vacations or sick. In view of the foregoing, we find the board lead mechanic is a supervisor within the meaning of the Act, and shall exclude him from the unit of production and maintenance employees.

Inspectors: The Employer agrees with the Union that the inspectors are not supervisors but contends that they should be included in the unit of testers rather than in the production and maintenance unit because they perform the same type work as the testers and it would create more harmony if they are included in the testers unit. We find no merit in the Employer's contention. The Employer's 6 inspectors, 3 in the board plant and 3 in the glatex shingle plant, are under the supervision of the quality control superintendent who also supervises the testers. Unlike the testers, who work in the laboratory using test tubes and the laboratory equipment determining the quality of the product, the inspectors work at the end of the respective production lines, visually inspecting the finished product as it comes off the production line and rejecting culls. The culls are sorted by the inspectors as to type of imperfection and a written report is prepared which is forwarded to the quality control division which eventually reaches the production foreman who confers with employees to prevent further imperfections in the product. The inspectors have no special schooling or training. In view of the fact that the inspectors work in the production area and do not perform work of a technical nature, in accord with customary Board policy⁸ and our prior determination,⁹ we shall include the inspectors in the production and maintenance unit.

Accordingly, we find that the following employees constitute units appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

⁷ In *United States Gypsum Co.*, 105 NLRB 931, 940, the Board, in the absence of record evidence, found this employee not to be a supervisor and included him in the unit.

⁸ See *Gerber Plastics Company*, 113 NLRB 462; and *The F. C. Russell Company*, 114 NLRB 38.

⁹ *United States Gypsum Company*, 79 NLRB 194.

a. All production and maintenance employees including inspectors, board machine operators, glatex machine operators, shingle wet machine operators, and head takeoff men, but excluding office clerical employees, testers, guards, professional employees, the board lead mechanic, and supervisors as defined in the Act.

b. All testers excluding all other employees, inspectors, office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

Howard Aero, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO). Case No. 39-CA-604. February 11, 1958

DECISION AND ORDER

On April 24, 1957, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report, and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case. It hereby adopts the Trial Examiner's findings and conclusions only to the extent that they are consistent with the findings and conclusions set forth below.

1. We do not agree with the Trial Examiner's conclusion that the Respondent violated Section 8 (a) (1) of the Act by its discharge of employee Lumpkins and Crew Chief Barclay.

Barclay was employed by the Respondent on March 3, 1955, as a helper. On August 10, 1956, he was promoted to the position of crew chief, a supervisory position.¹ On August 20, Barclay signed a

¹The Trial Examiner found that individuals employed as crew chiefs were supervisors within the meaning of Section 2 (11) of the Act. As the record adequately supports this finding, we adopt it.