

Finally, the Union contends that the eligibility list was improper because the company attorney challenged its accuracy just before the voting began, and that the tally of ballots as originally made out was fatally defective because it showed only 10 ballots issued when in fact 11 were used, and it stated that a majority of ballots had been cast for the "Employer and Petitioner," instead of against any labor organization. The Regional Director found that the company manager noticed the 11 employees in line to vote when only 10 names were on the eligibility list and upon checking notified the Board agent of the name of the employee whose name had been omitted from the list. There is no allegation that this employee did not properly belong in the unit. The tally of ballots was corrected on January 17, 1958, by the issuance of an amended tally of ballots. Like the Regional Director we find no merit in any of these objections; in any event we also agree with the Regional Director's conclusion that any possible temporary inaccuracy of this type on the tally sheet could not have interfered with the election because the sheet was not made out until after the ballots were counted.

Accordingly, we adopt the Regional Director's recommendation that none of the objections or exceptions raise material or substantial issues respecting the results of the election. In view of the foregoing, we also deny the Union's request for a hearing. As the Union has failed to secure a majority of the ballots cast we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Tulsa General Drivers, Warehousemen and Helpers, Local No. 523, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that this Union is not the exclusive representative of the employees at the Employer's Tulsa, Oklahoma, plant in the unit found to be appropriate.]

CHAIRMAN LEEDOM and MEMBER JENKINS took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

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**Barrett Division, Allied Chemical & Dye Corporation and United Cement, Lime and Gypsum Workers International Union, AFL-CIO, Petitioner.** *Case No. 22-RC-120. May 16, 1958*

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Leonard Bass, hearing 120 NLRB No. 138.

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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 Fanning].

Upon the entire record in this case, the Board finds:

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

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Petitioner seeks a representation election in a unit consisting of production and warehouse employees who have recently been transferred from the Employer's gypsum board plant at South Kearny, New Jersey, where the Petitioner was the recognized bargaining representative, to its plant at Edgewater, New Jersey, where the Intervenor is the recognized bargaining representative. The Intervenor contends that the petition is barred by its agreement with the Employer effective to July 28, 1958, as supplemented by an additional provision added in July 1957, providing that new departments might be added by mutual agreement of the parties. The Employer's brief waives the contract-bar contention which it made at the hearing. At its Edgewater plant the Employer produces a wide variety of chemicals and building materials which are used in roofing and paving, as protective coatings, and as pigments in inks, plastics, and finishes. The plant contains at least 10 buildings in which production operations are carried on, and is spread over 70 acres. The plant is also used as a warehouse and distribution point for many other products manufactured by the Employer at its other facilities throughout the country. All operations are supervised by a plant superintendent. All nonproductive functions, such as maintenance, purchasing, accounting, payroll, and personnel are performed on a plantwide basis and are administered by supervisors who are ultimately responsible to the plant superintendent.

In February 1956 the Employer bought the business of a firm which operated a gypsum calcining plant at Newark, New Jersey, and a gypsum board mill at South Kearny, New Jersey. The Petitioner had represented the production and maintenance employees at both locations for several years, and continued as such representative after the

<sup>1</sup> The hearing officer permitted Local 14, International Chemical Workers Union, AFL-CIO, to intervene on the basis of its allegation that its current contract for the employees at the Employer's Edgewater plant covers the employees who transferred from the South Kearny plant where they were represented by the Petitioner. The Petitioner contends that the intervention should have been denied because the Intervenor has no contractual interest in these employees. We find that the Intervenor does have an interest herein which is sufficient to support its intervention. *American Engineering Company*, 112 NLRB 14. We affirm the hearing officer's ruling.

acquisition. The same year the Employer began construction of facilities for the manufacture of gypsum board at its Edgewater plant. Although the Employer had contemplated continued production of gypsum board at South Kearny even after completion of its new facilities at Edgewater, the substantial decrease in demand for building materials toward the close of 1957, when the additional facilities became ready, caused it to discontinue all production at the old plant. Production of gypsum board began at the new building of the Edgewater plant in January 1958, and the more than 70 employees at the old plant were all offered jobs at Edgewater at their existing rates of pay. The maintenance employees from South Kearny were absorbed into the maintenance department at Edgewater which services the entire plant, while the production employees, 53 in number, are now engaged in the same type of work at Edgewater. Although all production work has ceased at South Kearny, eight employees remain there for maintenance duties. If demand warrants, the Employer will resume operations at South Kearny. The present employment of hourly rated personnel at Edgewater is about 220, which includes the 70 employees who formerly worked at South Kearny.

While the new gypsum board facilities were being built in 1957, both the Petitioner and the Intervenor asserted claims to represent all employees hired for the new operation at Edgewater. More than 5 months before production began, the Employer and Intervenor added a supplement to their agreement providing that "By mutual agreement, new departments may be added or existing departments deleted as operations may require." The Intervenor contends that this paragraph has had the effect of including the new employees at the gypsum board facilities within its contract unit, and that its agreement therefore constitutes a bar to this proceeding. We do not agree. Whatever may have been the Intervenor's intent in suggesting the addition of this paragraph, it is clear that the Employer had not agreed to their automatic inclusion within the Intervenor's unit, since it told both unions that the matter was one for Board resolution. Further, even if the Employer and Intervenor had mutually agreed to the inclusion, the fact that the supplementary paragraph was added before any employees were hired for the new operation would be sufficient to prevent it from being a bar.<sup>2</sup> In view of the long, separate bargaining history for the South Kearny gypsum board employees and the fact that gypsum board, although a building material, is not functionally related to the other types of building products already in production at Edgewater, we consider that the employees who were transferred from the old plant were not a normal accretion to the working force

<sup>2</sup> *Fleming & Sons, Inc.*, 118 NLRB 1451; *Byron-Jackson Division, Borg-Warner Corporation*, 117 NLRB 1613; *Armstrong Cork Company (Lancaster Floor Plant)*, 106 NLRB 1147.

at Edgewater. It follows, therefore, that the agreement in effect cannot serve as a bar.<sup>3</sup>

Accordingly, we find that a question affecting commerce exists concerning the representation of the gypsum board employees within the meaning of Section 9 (c) (1)-and Section 2 (6) and (7) of the Act.

4. The Petitioner contends that a unit limited to the gypsum board production employees and the employees who work in the warehouse adjacent to the new facility is appropriate. The Employer and Intervenor maintain that only a plantwide unit is appropriate.

As the gypsum board operation is now physically part of the Edgewater plant, shares all its facilities and services, and is subject to the same general supervision, we find that absorption of the gypsum board employees into the Intervenor's existing unit may be appropriate. We do not believe, however, that they compel a finding that a separate unit of the same employees may not also be appropriate. As these employees were separately represented before their physical transfer to the Edgewater plant as a homogeneous group, and as the production of gypsum board is a new operation for the Edgewater plant, we shall follow our normal practice of permitting employees in these circumstances to decide whether they wish to be separately represented. We shall make no determination with respect to the gypsum board production employees at this time but shall first ascertain their desire as expressed in the election which we direct herein.

We shall direct an election among the following employees: All production employees at the Employer's gypsum board facility at its Edgewater, New Jersey, plant excluding maintenance and warehouse employees,<sup>4</sup> office clerical and professional employees, guards, and supervisors as defined by the Act.

If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate unit, and the Regional Director is instructed to issue a certification of representatives to the Petitioner for such unit, which the Board, under these circumstances, finds to be appropriate for purposes of collective bargaining. If a majority of the employees in the above-voting group cast their ballots for the Intervenor they will be taken to have indicated their desire to be part of the existing production and maintenance unit represented by the Intervenor, in which event the Regional Director will certify the results of the election.

[Text of Direction of Election omitted from publication.]

<sup>3</sup> *Ibid.*

<sup>4</sup> Some of the employees in the warehouse immediately adjacent to the gypsum board building were warehouse employees at South Kearny, but most of the employees now assigned there have worked only at the Edgewater plant. The warehouse is used to store products other than gypsum board, and gypsum board is also stored at other warehouses at the plant. Further, crews are frequently shifted between warehouses. We find, therefore, that there are no warehouse employees who are exclusively identified with the gypsum board operation.