

In the Matter of JOHNS-MANVILLE PRODUCTS CORPORATION¹ and ASBESTOS WORKERS' UNION, NASHUA LOCAL, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, THE INDEPENDENT ASBESTOS WORKERS' ASSOCIATION, and AMERICAN FEDERATION OF LABOR.

Case No. R-155.—Decided June 26, 1937

Asbestos Products Manufacturing Industry—Election Ordered; controversy concerning representation of employees: majority status disputed by employer; rival organizations; substantial doubt as to majority status; strike provoked by employer's refusal to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining*: hourly rate employees; functional coherence; eligibility for membership in rival organizations—*Certification of Representatives*.

Mr. Edmund J. Blake for the Board.

Mr. Robert B. Hamblett, of Nashua, N. H., for the Company.

Mr. Horace J. Brouillette, of Nashua, N. H., for Asbestos Workers' Union, Nashua Local, affiliated with the Committee for Industrial Organization.

Mr. Raymond C. Leahy, of Nashua, N. H., for The Independent Asbestos Workers' Association.

Mr. John L. Barry, of Manchester, N. H., for the American Federation of Labor.

Mr. Alexander B. Hawes, of counsel to the Board.

DECISION

STATEMENT OF CASE

On April 30, 1937, Asbestos Workers' Union, Nashua Local, the name of which has since been changed to United Asbestos Workers' Industrial Local Union No. 5, filed with the Regional Director for the First Region (Boston, Massachusetts), a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees in the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, hereinafter referred to as the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On May

¹The name of the Company appeared as "Johns-Manville" in the petition as originally filed; it was corrected by a motion to amend granted at the hearing.

25, 1937, the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing. On May 26, 1937, the Regional Director issued a notice of hearing to be held at Nashua, New Hampshire, on June 3, 1937. On June 2, 1937, The Independent Asbestos Workers' Association, hereinafter referred to as the Independent Association, filed a petition to be permitted to intervene in the proceeding in accordance with Article II, Section 19 of said Rules and Regulations.

Pursuant to the notice, a hearing was held in Nashua, New Hampshire, on June 3, 1937, before Tilford Dudley, the Trial Examiner duly designated by the Board. At the hearing the American Federation of Labor, hereinafter referred to as the Federation, filed a petition to be permitted to intervene in the proceedings in accordance with Article II, Section 19 of said Rules and Regulations. This petition, as well as the petition of the Independent Association, previously filed, was granted by the Trial Examiner. We affirm these rulings. At the hearing the Board, the Independent Association, and the Company were represented by counsel, and United Asbestos Workers' Industrial Local Union No. 5, hereinafter referred to as the United Union, and the American Federation of Labor were represented by organizers for the Committee for Industrial Organization and for the American Federation of Labor, respectively. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. No objections were raised to the introduction of any of the evidence.

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

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

Johns-Manville Products Corporation, a Delaware corporation, with head offices in New York, New York, and a plant in Nashua, New Hampshire, is a wholly owned subsidiary of Johns-Manville Corporation. The Nashua plant of the Company occupies three buildings there, employs about 540 hourly rate production workers, and is engaged in the manufacture of asbestos and cement products, and electrical insulating material. Its production in the year 1936 was valued at \$1,240,000. During 1937, the value of each month's production, up to the time of the strike in April, which is discussed below, was about \$175,000. The principal raw materials used by

the Nashua plant are asbestos and cement. The entire supply of these two materials is imported from outside the State of New Hampshire: asbestos from Canada and South Africa, cement from New York and Pennsylvania. Lacquers are secured from New Jersey, and lumber from Vermont, Maine, and Canada. Altogether 98 per cent of the materials used come from outside New Hampshire.

Ninety-eight per cent of the product also is shipped out. All sales are made to an affiliated company, but shipments are made, on orders from New York, direct to points throughout the United States as well as to foreign countries. About 40 per cent of the shipments are made by truck, the rest by rail.

II. THE ORGANIZATIONS INVOLVED

The United Union is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees of the Company in the Nashua, New Hampshire, plant except inspectors, foremen, assistant foremen, superintendents, paymasters, office clerks, time study, and efficiency men. The Independent Asbestos Workers' Association is a labor organization unaffiliated with any other body. It admits to membership the same classes of employees of the Company as the United Union, and in addition assistant foremen. The American Federation of Labor is a labor organization. There previously existed in the plant an American Federation of Labor local union, in which membership was open generally to production employees. While, at present, there is no such union, the Federation has certain local craft unions in Nashua made up of employees of other firms, and certain of the Company's employees are members or eligible to membership in such unions.

III. THE QUESTION OF REPRESENTATION

Brouillette, local organizer for the Committee for Industrial Organization, started organizing work among the employees of the Nashua plant about the middle of March, 1937. On April 8 he and a committee of nine employees called on MacIldowie, the plant manager, to ask that he negotiate with them concerning certain demands. MacIldowie asked Brouillette and the committee to submit evidence that they represented a majority of the plant employees. Though claiming to have cards signed by a majority, the committee refused to submit them on the ground that they were confidential. The discussion broke up on this refusal. After another later conference which ended in the same impasse, Brouillette wrote MacIldowie on April 14, suggesting an election. The Company replied April 20 that it would not bargain with the committee until it proved its authority, pointing out that the National Labor Relations Act pro-

vided a method for establishing that authority. On April 21 it again wrote Brouillette and the committee declining to consent to an election and pointing out that the Company could not, but the committee could, file a petition for certification of representatives under the National Labor Relations Act.

As a result of this breakdown of negotiations, a strike was called that same evening, April 21, which completely tied up the Nashua plant for a whole month. After the first night, no shipments moved in or out of the plant during this entire period. On May 21, the employees went back to work, however, without having secured any solution of the bargaining problem. In the meantime, the petition in this proceeding was filed on April 30, and on May 10, Brouillette and the committee secured for their organization a charter from the Committee for Industrial Organization, designating it as United Asbestos Workers' Industrial Local Union No. 5.

On May 27, MacIldowie received a letter from Leahy, an attorney, notifying him of the recent organization of "a large group of the employees" into the Independent Association, and stating that the association wished to be represented at any conference for collective bargaining.

At the hearing the United Union claimed a membership of 472, and the Independent Association a membership of 190. Since the total number of employees eligible for membership in these organizations is not over 540, their claims cast doubt upon each other. In addition, the American Federation of Labor contended that about eight per cent of the employees were members of local craft unions of the Federation and that some of the ex-members of its old plant local were still employed there. All three organizations, as well as the Company, agreed that there was a question as to representation which could best be settled by a secret poll among the employees. Each of the organizations expressed its willingness to have the names of the other two appear upon the ballot.

We find that this question of representation which has arisen, in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and with foreign countries, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE BARGAINING UNIT

The last payroll preceding the hearing on June 3 was that of May 29. It listed 518 hourly rate employees, exclusive of supervisory and clerical employees. In addition, it was testified that there were 22 regular employees temporarily absent for illness or other cause. The

payroll was classified into ten departments as follows: transite department, 140; compressing department, 41; ebony department, 160; tile department, 70; box and shipping department, 14; yard crew, 45; maintenance department, 41; boilers and burners, 12; inspectors, 14; miscellaneous, 14. Testimony developed, however, that many of these classifications were arbitrary. For example, apparently only nine of the men in the ebony department confine their work to ebony. The rest work also on transite. The departments are generally not segregated from each other in the plant. The compressing men work on both ebony and transite, and the transite and ebony men work in the same parts of the plant with them and each other. The yard crew is engaged in moving materials all over the plant. Moreover, it is not the department classification which determines the rate of wages paid, but the actual type of work done by each employee.

The United Union and the Independent Association both admit to membership men from all these departments (with the exception of the inspectors). All, even maintenance men, are regarded as production employees for their purposes. Both these unions, however, exclude inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency men. The United Union also excludes assistant foremen. It appears, however, that these employees have no right to hire or discharge and ordinarily are engaged directly on production. Their only distinguishing function is that they temporarily replace absent foremen. We think that their interests are closer to those of the ordinary, than to those of the supervisory, employees.

At the hearing the organizations involved, including the American Federation of Labor, indicated no disagreement with the designation of a unit along the lines of the group generally eligible for membership in the United Union and the Independent Association. The Federation recognized the probability of such a designation by asking that its name (rather than the names of any of its constituent unions) appear on the ballot.

Therefore, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act, we find that the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, except inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, constitute an appropriate unit for the purposes of collective bargaining.

V. CONDUCT OF ELECTION

Those eligible to vote shall be all employees who, as of May 29, 1937, come within the classification stated above, including, in addition to those appearing on the payroll as of that date, all regular employees in such classification who were then temporarily absent for illness or other cause, and excluding all who have since quit or been discharged for cause.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the employees of the Nashua, New Hampshire, plant of the Johns-Manville Products Corporation, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, except inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as a part of the investigation authorized by the Board to ascertain the representatives for collective bargaining with Johns-Manville Products Corporation, an election by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this manner as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among all of the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation who appeared on its payroll of May 29, 1937, and all such hourly rate employees who were regularly employed at that date though

temporarily absent for illness or other cause, except, however, inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, and those who since have quit or have been discharged for cause, to determine whether they desire to be represented by United Asbestos Workers' Industrial Local Union No. 5, The Independent Asbestos Workers' Association, or the American Federation of Labor, for the purposes of collective bargaining.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

July 6, 1937

The Board having directed on June 26, 1937, that an election be conducted within 15 days from said date among the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation who appeared on its payroll of May 29, 1937, including such hourly rate employees who were regularly employed at that date although temporarily absent for illness or other cause, but excepting inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, and those who have since quit or have been discharged for cause, to determine whether they desire to be represented by United Asbestos Workers' Industrial Local Union No. 5, The Independent Asbestos Workers' Association, or the American Federation of Labor, for the purposes of collective bargaining;

And the Board having received on July 6, 1937, a telegraphic request from one Francis P. Fenton, signed in his capacity of "New England Representative American Federation of Labor", that the Board omit the name of the American Federation of Labor from the ballot to be used in the poll of the Johns-Manville Products Corporation employees;

And it appearing from the record in this case that said Francis P. Fenton occupies a position in the American Federation of Labor immediately superior to John L. Barry, who appeared at the hearing on behalf of said Federation, and that the appearance of said Barry at the hearing was at the direction of said Fenton, it is hereby

DIRECTED that, as a part of the investigation authorized by the Board to ascertain the representatives for collective bargaining with Johns-Manville Products Corporation, an election by secret ballot shall be conducted within 15 days from the date of the original Direction of Election on June 26, 1937, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among all

of the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation who appeared on its payroll of May 29, 1937, and all such hourly rate employees who were regularly employed at that date though temporarily absent for illness or other cause, except, however, inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, and those who since have quit or have been discharged for cause, to determine whether they desire to be represented by United Asbestos Workers' Industrial Local Union, No. 5 or The Independent Asbestos Workers' Association for the purposes of collective bargaining.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

July 20, 1937

On April 30, 1937, Asbestos Workers' Union, Nashua Local, the name of which has since been changed to United Asbestos Workers' Industrial Local Union, No. 5, filed with the Regional Director for the First Region (Boston, Massachusetts), a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees in the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 25, 1937, the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing. On May 26, 1937, the Regional Director issued a notice of hearing to be held at Nashua, New Hampshire, on June 3, 1937.

Pursuant to the notice, a hearing was held in Nashua, New Hampshire, on June 3, 1937, before Tilford Dudley, the Trial Examiner duly designated by the Board. At the hearing The Independent Asbestos Workers' Association, herein called the Independent Association, and the American Federation of Labor, herein called the Federation, were permitted to intervene in accordance with Article II, Section 19 of said Rules and Regulations: The Board, the Independent Association, and the Company were represented by counsel, and United Asbestos Workers' Industrial Local Union, No. 5, herein called the United Union, and the Federation were represented by organizers for the Committee for Industrial Organization and for the Federation, respectively. All parties participated in the hearing.

On June 26, 1937, the Board issued a Decision in which it found that a question affecting commerce had arisen concerning the representation of all the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, excepting inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, and that such employees constituted a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. In its Decision the Board directed that an election be held among such employees to determine whether they desired to be represented by United Asbestos Workers' Industrial Local Union, No. 5, The Independent Asbestos Workers' Association, or the American Federation of Labor.

On July 6, 1937, the Board, having received a telegraphic request from the New England representative of the Federation, in accordance with that request issued an Amended Direction of Election eliminating the name of the Federation from the ballot to be used in the election.

Pursuant to the Board's Decision and Amended Direction of Election, an election by secret ballot was conducted on July 7, 1937, by the Regional Director for the First Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. On July 9, 1937, the Regional Director issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot the Regional Director reported:

Total number of employees eligible to vote.....	513
Total number of ballots cast.....	478
Total number of ballots for United Asbestos Workers' Industrial Local Union No. 5.....	283
Total number of ballots for The Independent Asbestos Workers' Association.....	193
Total number of blank ballots.....	2
Total number of void ballots.....	0

In the conduct of the ballot the Regional Director ruled that two men came in the designation of "office clerks" and therefore were not eligible to vote, and that two other men, hourly rate employees in the cost reduction and development division, were eligible to vote because their work was subject to further inspection of the chemist. These rulings, which were embodied as findings in the Regional Director's report, are hereby affirmed.

United Asbestos Workers' Industrial Local Union, No. 5, having been selected by a majority of the hourly rate employees of the

Nashua, New Hampshire, plant of the Company, except inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all of such employees, and we will so certify it.

NOW THEREFORE, 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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Asbestos Workers' Industrial Local Union No. 5 has been selected by a majority of all of the hourly rate employees of the Nashua, New Hampshire, plant of Johns-Manville Products Corporation, except inspectors, foremen, superintendents, paymasters, office clerks, time study, and efficiency employees, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, United Asbestos Workers' Industrial Local Union No. 5 is the exclusive representative of all of such employees of Johns-Manville Products Corporation for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.