

In the Matter of MOSAIC TILE COMPANY and LOCAL 560 UNITED  
BRICK & CLAY WORKERS

Case No. R-498.—February 7, 1938

*Clay Products Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* all employees except those having the right to hire and fire, office workers, and salesmen; stipulation, no controversy as to—*Election Ordered—Petition Dismissed:* no representative chosen by employees at election.

*Mr. Oscar Grossman,* for the Board.

*Mr. F. F. Frazier* and *Mr. William Holliday,* of Zanesville, Ohio, for the Company.

*Mr. C. A. Maxwell,* of Zanesville, Ohio, for the Union.

*Mr. Richard A. Perkins,* of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 24, 1937, Local 560, United Brick & Clay Workers of America, herein called the Union, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Mosaic Tile Company, Zanesville, Ohio, 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 October 21, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing on due notice.

On October 26, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on November 10, 1937, at Zanesville, Ohio, before E. G. Smith, the Trial Examiner

duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. No motions were made and no objections to the admission of evidence were raised at the hearing.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Mosaic Tile Company is an Ohio corporation engaged in the manufacture and sale of floor and wall tile, with its principal manufacturing plant and place of business at Zanesville, Ohio. It also has a plant at Matawan, New Jersey, and maintains sales offices and warehouses in San Francisco and Los Angeles, California; Chicago, Illinois; New York City; and Washington, D. C. Only the Zanesville, Ohio, plant is here involved.

The Company uses raw materials such as clay, chemicals, and color dyes, which are obtained, in part, from Maine, Florida, Kentucky, and New York. The value of raw materials purchased in the period from December 31, 1936 to September 30, 1937, was \$350,000. Sales for the same period amounted to \$2,000,000. The Company manufactures 15 per cent of the national production in its field, and ships 75 per cent of its output out of Ohio by motor and rail.

#### II. THE ORGANIZATION INVOLVED

United Brick & Clay Workers of America, Local 560, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all production employees of the Company at its Zanesville, Ohio, plant, excluding office workers, salesmen, and supervisory employees.

#### III. THE QUESTION CONCERNING REPRESENTATION

In its petition the Union claimed to represent 395 of the 648 workers which it alleged were at that time employed by the Company. At the hearing the Union claimed that at least 404 employees of the Company were included within its membership. The Union sought recognition as the exclusive representative of the employees of the Company for the purposes of collective bargaining, but the Company refused such recognition in the absence of certification by the Board. The Company indicated a willingness to have the Board conduct an election to determine a representative for bargaining purposes.

We find that a question has arisen concerning representation of employees of the Company at its Zanesville, Ohio, plant.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring 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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

At the hearing, the Company and the Union stipulated that all employees of the Company on the pay roll as of June 2, 1937, except those having the right to hire and fire, office workers, and salesmen, should be eligible to vote at an election. The Company and the Union thereby indicated that they considered all employees of the Company, at its Zanesville, Ohio, plant, excluding those having the right to hire and fire, office workers, and salesmen, to constitute an appropriate unit.

We find that all employees of the Company at its Zanesville, Ohio, plant, excluding those having the right to hire and fire, office workers, and salesmen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

Although the Union claims that a large majority of the employees of the Company within the appropriate unit are included within its membership, no application or membership cards were submitted in evidence at the hearing. Nor did the Union seek certification without an election. We find that the question which has arisen concerning the representation of employees can best be resolved by holding an election by secret ballot.

At the hearing the Company and the Union stipulated that in the event of an election, all employees in the appropriate unit who were on the pay roll of the Company as of June 2, 1937, should be eligible to vote. We find this eligibility date satisfactory.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

## CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Mosaic Tile Company, Zanesville, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of the Company at its Zanesville, Ohio, plant, excluding those having the right to hire and fire, office workers, and salesmen, 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 HEREBY DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Mosaic Tile Company, Zanesville, Ohio, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth 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—Series 1, as amended, among all the employees of Mosaic Tile Company at its Zanesville, Ohio, plant, who were employed by the Company as of June 2, 1937, excluding those having the right to hire and fire, office workers, and salesmen, and those who quit or were discharged for cause between such date and the date of election, to determine whether or not they desire to be represented by United Brick & Clay Workers of America, Local 560, for the purposes of collective bargaining.

[SAME TITLE]

## SUPPLEMENTAL DECISION

AND

## ORDER

*March 12, 1938*

On February 7, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election provided that an

election by secret ballot be held among all the employees of Mosaic Tile Company, herein called the Company, at its Zanesville, Ohio, plant, who were employed by the Company as of June 2, 1937, excluding those having the right to hire and fire, office workers, and salesmen, and those who quit or were discharged for cause between such date and the date of election, to determine whether or not they desired to be represented by United Brick & Clay Workers of America, Local 560, for the purposes of collective bargaining.

Pursuant to the Direction, an election by secret ballot was conducted on February 18, 1938, at Zanesville, Ohio, under the direction and supervision of the Regional Director for the Ninth Region (Cincinnati, Ohio). On February 21, 1938, the Regional Director issued and served upon the parties an Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by either of the parties.

As to the results of the balloting, the Regional Director reported as follows:

Total number alleged eligible voters.....	724
Total number votes cast.....	595
Total number unchallenged ballots for Local 560.....	156
Total number of unchallenged ballots against Local 560.....	435
Total number of challenged ballots.....	4
Total number blank ballots.....	0
Total number void ballots.....	0

The results of the election show that no collective bargaining representative has been selected by a majority of the employees in the appropriate unit. We shall accordingly dismiss the petition for investigation and certification filed by the Union.

### ORDER

Pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is ordered that the petition filed by United Brick & Clay Workers of America, Local 560, for investigation and certification of representatives of employees of Mosaic Tile Company, Zanesville, Ohio, be, and it hereby is, dismissed.