

In the Matter of WOODVILLE LIME PRODUCTS COMPANY and AMERICAN
FEDERATION OF LABOR

Case No. R-636.—Decided May 23, 1938

Lime Quarrying and Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations—*Unit Appropriate for Collective Bargaining:* all employees, excluding supervisory employees having power to hire and discharge; no controversy as to—*Representatives:* proof of choice: comparison of pay roll with affidavits of union members—*Certification of Representatives:* upon proof of majority representation.

Mr. Harry L. Lodish, for the Board.

Mr. Robert Newbegin and Mr. D. L. Sears, of Toledo, Ohio, for the Company.

Mr. Samuel R. Isard, of Toledo, Ohio, for the A. F. of L.

Mr. Lowell M. Goerlich, of Toledo, Ohio, for the International Union.

Mr. Francis Hoague, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On February 3, 1938, the American Federation of Labor, herein called the A. F. of L., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Woodville Lime Products Company, herein called the Company, at its plant at Woodville, Ohio, 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 February 9, 1938, 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 upon due notice.

On February 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the

American Federation of Labor. Due to a delay in the mails, the copy sent to the Quarry Workers International Union of North America, herein called the International Union, a labor organization claiming to represent employees directly affected by the investigation, was not duly served. Pursuant to the notice, a hearing was held on March 8, 1937, at Toledo, Ohio, before Harlow Hurley, the Trial Examiner duly designated by the Board. Because of the defective service on the International Union the hearing was adjourned to a future date, to be determined subsequently.

On March 11, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the American Federation of Labor, and the International Union. Pursuant to the notice, a hearing was held on March 25, 1938, at Toledo, Ohio, before Hugh C. McCarthy, the Trial Examiner duly designated by the Board. The Board, the Company, the International Union, and the American Federation of Labor 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Woodville Lime Products Company, an Ohio corporation, is engaged in the quarrying and manufacture of finished hydrated lime at Woodville, Ohio, from material quarried from its own property at that point. Its business constitutes 15 per cent of the total volume of the industry. Although the Company's purchases from outside the State are negligible, approximately 88 per cent of its finished product is shipped outside of Ohio and distributed through dealers. There were 72 employees on the Company's pay roll on March 8, 1938.

II. THE ORGANIZATIONS INVOLVED

Quarry Workers International Union of North America, Local No. 237, is a labor organization, apparently admitting to its membership employees of the Company, excluding supervisory employees having the power to hire and discharge. Although the organization has been affiliated in the past with the A. F. of L., the testimony at the hearing was to the effect that a secession had taken place and that control of the organization had passed to the Committee for Industrial Organization.

Dolomitic Quarry Workers Union No. 21482 of Ohio, hereinafter called the Dolomitic Quarry Workers, is a labor organization affli-

ated with the A. F. of L., having been chartered on February 3, 1938. It apparently admits to membership all employees of the Company, excluding supervisory employees having the power to hire and discharge.

III. THE QUESTION OF REPRESENTATION

On May 1, 1937, the International Union executed an exclusive bargaining agreement with the Company covering wages, hours, and working conditions. The agreement, effective as of June 1, 1937, provided that it should remain in force until May 1, 1938, and thereafter for another year and from year to year, unless notice of a change was given in writing by either party 30 days prior to May 1 of any year. As noted above, the testimony at the hearing was to the effect that thereafter a secession had taken place and that control of the International Union had passed to the C. I. O. During the latter part of January 1938, picketing closed the plant for about 3 weeks. The A. F. of L. stated that the picketing was initiated by the International Union for the purpose of discouraging any A. F. of L. organization among the Company's employees. The A. F. of L., on February 3, 1938, chartered the Dolomitic Quarry Workers which now claims to represent a majority of the Company's employees. On the same date, the A. F. of L. filed the petition herein. On March 8, 1938, Samuel R. Isard, as "Representative, American Federation of Labor," by letter notified the Company that the International Union had "passed into the control of the C. I. O."; that the A. F. of L. had, therefore, organized the Dolomitic Quarry Workers; that the members of the Dolomitic Quarry Workers desired to make some changes in the present agreement or negotiate "an entire new agreement representative of their organization"; and that, pursuant to Article XXIII of the agreement, notice was thereby given.¹ At the hearing, counsel for the International Union expressed a desire that an election be held to determine a bargaining representative.

We find that a question has arisen concerning representation of employees of the Company.

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

¹ In view of the other factors set forth herein, consideration need not be given to the effect, if any, of the "notice of change" given by Isard.

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 petitioner contended that the bargaining unit should be composed of all the employees of the Company, excluding supervisors having the power to hire and discharge. No objection was raised to such unit by any party.

We find that all the employees of the Company, excluding supervisors having the power to hire and discharge, 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

There was introduced in evidence at the hearing the Company's pay roll of March 8, 1938, showing approximately 72 employees within the unit which we have found appropriate. The Dolomitic Quarry Workers introduced evidence of affidavits signed March 5, 1938, by 64 of such employees, each of which stated that the signer had withdrawn as a member of the International Union, had become a member of the Dolomitic Quarry Workers, and desired representation by the latter organization. Although the International Union claims that a majority of the employees are still members of the International Union, it submitted no evidence which indicates that the affidavits signed by 64 employees do not reflect their desires regarding representation.

We find that the Dolomitic Quarry Workers has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all employees in such unit for the purposes of collective bargaining, and we will so certify.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Woodville Lime Products Company located at Woodville, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. The employees of Woodville Lime Products Company, Woodville, Ohio, excluding supervisors having the power to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The Dolomitic Quarry Workers Union No. 21482 of Ohio is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

CERTIFICATION OF REPRESENTATIVES

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, Dolomitic Quarry Workers Union No. 21482 of Ohio has been designated and selected by a majority of all employees of Woodville Lime Products Company, Woodville, Ohio, excluding supervisors having the power to hire and discharge, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Dolomitic Quarry Workers Union No. 21482 of Ohio, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.