

In the Matter of E. I. DU PONT DE NEMOURS & COMPANY and UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 4-R-1232.—Decided November 6, 1943

Messrs. E. C. First, Jr., and P. B. Collins, of Wilmington, Del., and Mr. Frank A. Canon, of New Brunswick, N. J., for the Company.

Messrs. Samuel L. Rothbard, Clarence Talisman and David Elliott, of Newark, N. J., for the United.

Mr. William R. Cameron, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of E. I. du Pont de Nemours & Company, New Brunswick, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at New Brunswick, New Jersey, on October 14, 1943. The Company and the United appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

E. I. du Pont de Nemours & Company, a Delaware corporation, is engaged in the manufacture of general chemical and allied products.

We are here concerned with the Company's plant at New Brunswick, New Jersey, where it is engaged in the production of photographic and fine chemicals, vitamins, perfume bases, and poultry glass. The Company's purchases of raw materials, consisting of chemicals, which are shipped to its New Brunswick plant from points outside the State of New Jersey amount in value to more than \$70,000 per month, which is more than 50 percent in value of the total raw materials used. Finished products amounting in value to more than \$100,000 per month, which is more than 50 percent in value of the total products manufactured, are shipped to points outside the State of New Jersey. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

United Gas, Coke and Chemical Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The United claims to represent a majority of the Company's employees within the unit which it considers to be appropriate, and has requested recognition as the collective bargaining representative. The Company declines to recognize the United as such representative, asserting that the unit sought by the United is not appropriate, and has referred the United to the Board.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the United represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Company and the United agree that the appropriate unit comprises all production and maintenance employees, excluding supervisory employees of the rank of foreman and above, militarized plant guards, and office and clerical employees. The Company, however,

<sup>1</sup> The Regional Director reported that the United had submitted 140 membership cards, of which 123 appeared to bear the genuine original signatures of persons whose names are on the Company's pay roll of September 4, 1943, containing the names of 196 employees in the unit claimed by the United to be appropriate. Of the 123 cards, 7 were undated, 1 was dated in September, and the others in July and August 1943.

seeks also to include laboratory assistants and helpers,<sup>2</sup> and laboratory and office janitors. The United contends that these employees should be excluded.

The Company bases its contention for inclusion of the laboratory assistants and helpers upon the fact that they are employees without special technical training who are engaged in performing routine tests, under supervision, for control of the quality of the Company's products. They receive substantially the same rates of pay as production employees of similar grade. The record discloses, however, that the laboratories in which they work are located in a separate building, housing also certain of the Company's offices, apart from the production areas of the plant. No labor organization is here seeking to represent the laboratory employees, and it appears that the United does not admit them to membership. They are, however, eligible to membership in another affiliate of the C. I. O. An independent union, which was the direct predecessor of the United likewise did not admit the laboratory employees to membership, nor did it include them in its negotiations with the Company and in the presentation of grievances. In view of the foregoing, we shall exclude the laboratory assistants and helpers.

The record disclosed that there are several janitors who either work in or about the laboratories or within the buildings in which the Company's offices and laboratories are located. Their interests do not appear to be sufficiently allied with those of employees who work in the production areas of the plant to warrant their inclusion with the latter group; we shall therefore exclude the laboratory and office janitors.

The Company and the United stipulated that all employees below the rank of foreman, such as assistant foremen and working foremen, are on an hourly pay roll, perform manual labor, and have no supervisory duties within the customary definition. It was further stipulated, however, that in the absence of foremen some supervisory powers are occasionally exercised by assistant foremen. Inasmuch as the record does not indicate the nature or extent of the supervisory powers so exercised by assistant foremen, and does not clearly indicate whether working foremen may not sometimes be possessed of such authority, we shall exclude or include assistant foremen and working foremen depending upon whether they fit the definition of supervisory employees hereinafter set forth.

We find that all production and maintenance employees of the Company at its New Brunswick, New Jersey, plant, excluding office and clerical employees, laboratory employees, laboratory and office janitors, militarized plant guards, supervisory employees of the rank of fore-

<sup>2</sup> The Company also employs in its laboratories certain chemists, chemists' assistants, physicists and biologists, who, because of their advanced technical training and the nature of their duties, are by agreement excluded.

man and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with E. I. du Pont de Nemours & Company, New Brunswick, New Jersey, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, for the purpose of collective bargaining.