

In the Matter of LILLY VARNISH COMPANY and UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, AFFILIATED WITH THE C. I. O., LOCAL 168

Case No. 9-R-1220.—Decided December 7, 1943

Messrs. Kurt F. Pantzer and John W. Houghton, both of Indianapolis, Ind., for the Company.

Messrs. Howard L. McNamara and Thomas H. Taylor, both of Indianapolis, Ind., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the Union,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of Lilly Varnish Company, Indianapolis, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddair, Jr., Trial Examiner. Said hearing was held at Indianapolis, Indiana, on October 28, 1943. The Company and the Union 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

Lilly Varnish Company, an Indiana corporation with its principal manufacturing plant and sales office located in Indianapolis, Indiana,

¹ At the hearing the Union made a motion to amend all papers to change the name of the labor organization to United Gas, Coke & Chemical Workers of America, affiliated with the C. I. O., Local 168. This motion was granted by the Trial Examiner and all papers were amended accordingly.

is engaged in the manufacture and sale of protective coatings, such as varnishes, enamels, lacquers, stains, and fillers. The Company purchases raw materials valued in excess of \$100,000 per annum, of which more than 50 percent is received from sources outside the State of Indiana, and produces finished products valued at more than \$200,000 per annum, of which more than 50 percent is shipped to points outside the State of Indiana. In the course and conduct of its business, the Company maintains auxiliary sales offices in Chicago, Illinois, and Gardner, Massachusetts, and sales agents throughout the eastern half of the United States. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Gas, Coke & Chemical Workers of America, Local 168, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 Union seeks to represent a unit consisting of all production and maintenance employees of the Company including truck drivers, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, clerical employees, technicians, laboratory workers, and employees directly connected with management or ownership of the Company. The Company concedes the general appropriateness of the unit sought herein, but

²The Field Examiner reported that the Union submitted 33 designations of which 30 bore apparently genuine original signatures and contained the names of persons appearing upon the Company's pay roll of October 1, 1943. There are apparently 36 employees in the unit sought herein by the Union. He further reported that there are approximately 56 employees in the unit which the Company contends is appropriate, and that the Union has no representation among the employees in dispute.

contends that laboratory workers who are engaged in checking raw materials prior to processing and finished materials during and upon completion of the processing, should be included within the unit.

The Company employs a group of laboratory workers, who are engaged in the several laboratories maintained by the Company at its Indianapolis plant, and whose duties consist of testing, inspecting, formulating, shading, and matching the various products of the Company in their finished or unfinished state. Some of these employees commenced their employment with the Company as production and maintenance workers, and gradually advanced to their present positions; others commenced their employment in the laboratory directly, and still others came into the laboratory from various other positions with the Company. These employees are paid hourly, weekly, or monthly, depending partially upon their prior experience and their relative utility to the Company. In contrast to the research technicians employed by the Company, who must be graduate chemists, there are no high standards of education or technical training required of these employees. They are not engaged in experimental or research work, as such, and the majority of their time is spent in duties connected with the manufacturing process of the Company. These employees are eligible for membership in a labor organization affiliated with the same parent body as the Union herein, and for this reason, the Union does not admit them to membership and has no membership among them. Under these circumstances, we shall exclude them from the unit.³

Accordingly, we find that all production and maintenance employees of the Company including truck drivers, but excluding clerical employees, laboratory technicians, laboratory workers, salesmen, and all 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.

³ *Matter of Monsanto Chemical Company (Longhorn Chemical Works)*, Case No. 16-R-743, 53 N. L. R. B. 784; *Matter of E. I. du Pont de Nemours & Company*, 53 N. L. R. B. No. 8; Cf. also *Matter of Colorado Portland Cement Company*, 15 N. L. R. B. 197.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Lilly Varnish Company, Indianapolis, Indiana, 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 Ninth 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 those employees 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, Local 168, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.