

In the Matter of E. I. DU PONT DE NEMOURS & COMPANY *and* DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

In the Matter of E. I. DU PONT DE NEMOURS & COMPANY *and* DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

*Cases Nos. 10-R-993 and 10-R-1020 respectively.—Decided
December 9, 1943*

*Mr. E. C. First, Jr., of Wilmington, Del., for the Company.
Messrs. William E. Mitch, Frank L. Parsons, and Howard Nail, of
Birmingham, Ala., for the Union.*

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of E. I. du Pont de Nemours & Company, Watson, Alabama, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing before H. F. Jones, Trial Examiner. Said hearing was held in Birmingham, Alabama, on October 27, 1943. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board.¹ The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 having offices and manufacturing plants throughout the United

¹ Subsequent to the hearing the parties entered into a written stipulation for the correction of certain errors in the transcript. The stipulation is hereby made a part of the record, and the transcript is ordered corrected in accordance therewith.

States, operates a plant located at Watson, Alabama, known as the Birmingham Works, at which it is engaged in the manufacture of explosives, ammonium nitrate, and commercial acids. Each month the Company purchases over 5,000 pounds of sulphuric and nitric acids, glycerine, sodium nitrate, and wood flour for use at its Birmingham Works. Over 50 percent of these raw materials is shipped to the plant from points outside the State of Alabama. Each month the Company manufactures at the Birmingham Works over 1 million pounds of finished products valued in excess of \$10,000, of which more than 50 percent is shipped to points outside the State of Alabama. The Company admits that at its Birmingham Works it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

By letter dated August 17, 1943, the Union advised the Company that it represented a majority of the employees at the Birmingham Works and requested recognition as their exclusive bargaining representative. The Union sent the Company a second letter dated September 9, 1943, in which it made a similar request with respect to the armed guards employed at the Birmingham Works. The Company refuses to accord the Union such recognition in either instance unless and until it is certified by the Board.

Statements prepared by a Field Examiner of the Board and introduced into evidence at the hearing indicate that the Union represents a substantial number of employees in each of the units which we hereinafter find to be appropriate.²

We find that questions affecting commerce have 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.

² *Case No. 10-R-998*: The Field Examiner reported that the Union submitted 68 application-for-membership cards bearing apparently genuine original signatures of persons whose names appear on the Company's pay roll of September 11, 1943, which contains the names of 141 persons within the alleged appropriate unit. Eight of these cards are undated and the remainder bear dates in August and September 1943.

Case No. 10-R-1020: The Field Examiner reported that the Union submitted 17 application-for-membership cards bearing apparently genuine original signatures of persons whose names appear on the Company's pay roll of September 11, 1943, which contains the names of 23 persons within the alleged appropriate unit. Three of the cards are undated, 12 are dated in August 1943, and 2 are dated in September 1943.

IV. THE APPROPRIATE UNITS

Case No. 10-R-993

At the hearing the Union amended its description of the bargaining unit which it seeks to establish in this case to read, "all the employees of the Company at the Watson, Alabama, plant, excluding executives, supervisory employees, clerical employees, armed guards, and any other employees having supervision of labor and the power to hire or discharge or to effectively recommend the same." The Company contends that all employees of the Birmingham Works, excluding executives, superintendents, supervisors, non-working foremen, garage foremen, labor foremen, armed guards, and all office and clerical employees in the main office building, constitute an appropriate bargaining unit.

The sole issue in the case involves the disposition of several categories of employees whom the Union desires to exclude from the bargaining unit over the objection of the Company. We shall discuss these employees below under separate headings.

Nitroglycerine line foreman: The Union contends that this employee should be excluded from the unit since he exercises substantial supervisory authority. The nitroglycerine line foreman is in charge of the manufacture of nitroglycerine. He is a salaried employee who works with as well as supervises the three hourly paid employees working on the nitroglycerine line which is housed in a separate building. It is incumbent upon him to see that his men follow safe procedures and practices in the manufacture of explosives. He spends at least 25 percent of his time inspecting equipment. He receives his working instructions from the powder supervisor and relays them to the other three nitroglycerine line employees. Although he does not possess the authority to hire or discharge, he is charged with the duty of reporting any infraction of the safety practices, which he may observe, to the powder supervisor who in turn reports to the plant superintendent. The plant superintendent alone possesses the authority to hire, discharge, or discipline employees. In view of the fact that the nitroglycerine line foreman is in charge of the three nitroglycerine line employees who work with him in a separate building, it is a reasonable inference that his recommendations concerning the status of those employees are given substantial consideration by the superintendent. Since the only labor organization involved desires his exclusion, we shall exclude the nitroglycerine line foreman from the appropriate unit.

Storekeeper and helper: The Union desires the storekeeper excluded from the appropriate unit as a clerical employee. The storekeeper maintains records, crates and uncrates material, and prepares type-

written reports concerning the disposition of material. He spends approximately 25 percent of his time performing manual labor and the remaining 75 percent performing clerical duties. He reports to the chief clerk and is paid a monthly salary. Since his work is primarily connected with the clerical staff and since the Union desires his exclusion from the unit, we shall exclude the storekeeper from the appropriate unit. One employee works in the storeroom in the capacity of a helper. He issues material as it is requisitioned, assists in crating and uncrating incoming and outgoing shipments, and performs janitorial work in the storeroom. Since he is an assistant to the storekeeper and spends a substantial amount of time performing clerical duties, we shall exclude this employee from the unit.

Magazine keeper and helper: The Union likewise desires that the magazine keeper and his helper be excluded from the unit. The magazine keeper receives, stores, and ships explosives. He keeps stock records in the magazine office and prepares bills of lading and monthly inventory reports. His supervisor is the powder supervisor and he is also on the salary pay roll. Approximately 50 percent of his time is devoted to clerical work and the remainder to manual labor. Since he is essentially a clerical employee and the Union desires to exclude him, we shall exclude the magazine keeper from the appropriate unit. The magazine keeper, like the storekeeper, has a helper to assist him. This employee functions in relation to the magazine keeper in the same manner as does the store keeper's helper in relation to the storekeeper. We shall exclude the magazine keeper's helper from the appropriate unit.

"Mechanics" whom the Union desires to exclude

John R. Vines: Vines is an hourly paid employee who is listed on the Company's pay roll as a mechanic's helper. He spends a portion of his time in the power and maintenance office recording and reporting power data. He also does some mechanical drawing. He also assists the powerhouse mechanic with repair work in the powerhouse. Occasionally he is assigned the duty of collecting the clock slips of the armed guards. He works under the supervision of the master mechanic and the power and maintenance superintendent. Since this employee spends a large portion of his time performing clerical duties and since the Union desires his exclusion, we shall exclude him from the appropriate unit.

John M. Patterson: This employee is designated on the Company's pay roll as a mechanic. His duties consist of directing and inspecting the servicing and loading of tank cars. He is also in charge of the loading of salvage material which the Company sells. He performs repair jobs in the plant and, at such times, he has a helper to assist

him. Occasionally, when the labor foreman is absent or engaged elsewhere, Patterson replaces him and is considered to be a supervisor by the employees working under him. He works under the supervision of the power and maintenance superintendent and the master mechanic. Inasmuch as it appears that he exercises supervisory authority when acting as labor foreman and since the only labor organization involved desires his exclusion, we shall exclude him from the appropriate unit.

William A. Goode: Goode is also a so-called mechanic who spends part of his time as a carpenter and the remaining portion of his time working in the mechanical department. His duties and functions are similar in nature to those performed by Patterson. He, too, occasionally acts as foreman in the absence of his immediate superior. A machinist called as a witness by the Union testified that he has frequently worked under the supervision of Goode. He further testified concerning one occasion when Goode apparently was successful in securing the discharge of an employee. We shall exclude Goode from the appropriate unit for the same reason we excluded Patterson.

We find that all employees of the Company at its Birmingham Works, excluding executives, supervisory employees, clerical employees, the nitroglycerine line foreman, the storekeeper and his helper, the magazine keeper and his helper, John R. Vines (mechanic's helper), John M. Patterson (mechanic), William A. Goode (mechanic), armed guards, and all other 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.

Case No. 10-R-1020

In this case the Union contends that all armed guards and military police employed at the Birmingham Works of the Company, excluding supervisors, comprise an appropriate bargaining unit. The Company, while not disputing the appropriateness of such a unit, reiterates the contention it made in the recent representation case,³ involving the Seneca, Illinois, plant of the Company, that the same labor organization should not be permitted to represent both the armed guards and the production and maintenance employees. For reasons stated in the cited case, we find this contention of the Company to be without merit. We find that all armed guards and military police employed by the Company at its Birmingham Works, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

³ *Matter of E. I. du Pont de Nemours & Company, et al.*, 49 N. L. R. B. 1125.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of our Direction of Elections, subject to the limitations and additions set forth therein.

DIRECTION OF ELECTIONS

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 E. I. du Pont de Nemours & Company, Birmingham Works, Watson, Alabama, separate elections 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 Tenth 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 of the Company, in the units 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 who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the date of the elections; to determine with respect to each group, whether or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.