

In the Matter of AIR REDUCTION SALES COMPANY and DISTRICT 50,  
UNITED MINE WORKERS OF AMERICA

*Case No. 4-R-1309.—Decided February 5, 1944*

*Mr. H. B. Seydel*, of Philadelphia, Pa., and *Mr. B. G. Tyler*, of Deepwater, N. J., for the Company.

*Mr. Daniel Marshall*, of Penns Grove, N. J., and *Mr. Wm. E. Collier*, of Philadelphia, Pa., for District 50.

*Mr. Wm. R. Smith*, of Salem, N. J., for the Association.

*Mr. Charles W. Schneider*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Air Reduction Sales Company, Deepwater, N. J., 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 Philadelphia, Pennsylvania, on January 4, 1944. The Company, District 50, and Chemical Workers Association, Inc., herein called the Association, 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

Air Reduction Sales Company is a Delaware corporation having its principal office in New York City. The Company is engaged in  
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the production of atmospheric gases and operates 165 plants in major cities and industrial areas throughout the United States. The present proceedings involve only the Deepwater, New Jersey, plant, where the Company manufactures nitrogen, oxygen, and dry ice. All the raw materials used by the Company at the Deepwater plant are purchased from E. I. du Pont de Nemours & Company at Deepwater. The nitrogen produced by the Company is sold to the du Pont Company, and the oxygen to a glass works within the State of New Jersey. Approximately 75 percent of the dry ice produced at the Deepwater plant, amounting in value to more than \$100,000, was shipped during the past year to States other than New Jersey.

The Company stipulated that it is engaged in interstate commerce and subject to the jurisdiction of the Board.

#### II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, and Chemical Workers Association, Inc., are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On or about November 5, 1943, District 50 notified the Company that it represented a majority of the Company's employees and requested recognition as collective bargaining representative. The Company declined to accord such recognition and referred District 50 to the Board.

A statement of the Regional Director introduced into evidence at the hearing, indicates that both District 50 and the Association represent substantial numbers 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

District 50 and the Association stipulated that all production and maintenance employees at the Company's Deepwater plant, excluding teamsters or truck drivers, supervisory and clerical employees, constitute an appropriate unit. The Company contends that its employees do not constitute an appropriate unit separate from the employees of E. I. du Pont de Nemours & Company.

<sup>1</sup> The Regional Director reported that District 50 submitted bargaining authorization cards indicating that it represented 23 to 25 employees within the appropriate unit, as of December 13, 1943. He further reported that the Association submitted similar evidence indicating that it represented 10 of the said 25 employees.

The plant at Deepwater is owned by du Pont, which leases it to the Company through an intermediary corporation owned by the Company. The Company and du Pont are separate and independent corporations. For reasons of national security, the Company makes use of the personnel and investigatory facilities of du Pont with respect to the hiring of employees, and, as a matter of policy, discharges employees who violate rules of du Pont. However, the Company exercises exclusive authority in the hiring and discharging of its employees, and in the setting of their rates of pay, hours, vacations, and other working conditions. Under these circumstances the employees of the Company properly constitute an appropriate unit.

We find that all production and maintenance employees at the Company's Deepwater plant, excluding teamsters or truck drivers, clerical employees, and 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Air Reduction Sales Company, Deepwater, N. J., 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 who have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by District 50, United Mine Workers of America, or by Chemical Workers Association, Inc., for the purposes of collective bargaining, or by neither.