

In the Matter of CALIFORNIA SPRAY-CHEMICAL CORPORATION *and* FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS AND TECHNICIANS, CHAPTER #25, CIO

Case No. 20-R-970.—Decided February 16, 1944

Pillsbury, Madison & Sutro, by *Mr. Norbert Korte*, of San Francisco, Calif., for the Company.

Mr. Bernard Young, of Oakland, Calif., for the Union.

Mr. Wallace E. Royster, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Federation of Architects, Engineers, Chemists and Technicians, Chapter #25, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of certain employees of California Spray-Chemical Corporation, Richmond, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on December 20, 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

California Spray-Chemical Corporation is a Delaware corporation engaged, at Richmond, California, in the manufacture and distribution of insecticides and fungicides. During the first 11 months of 1943,

54 N. L. R. B., No. 209.

the Company received from points outside California raw materials having a value of approximately \$450,000. During 1942 the Company shipped to points outside California finished products having the approximate value of \$800,000. Records for 1943 are incomplete, but shipments for that year will probably exceed those for 1942. The Company concedes, and we find, that its operation affects commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Federation of Architects, Engineers, Chemists and Technicians, Chapter #25, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated at the hearing that on November 1, 1943, the Union requested the Company to recognize it as exclusive bargaining representative of the employees within the unit which it claims to be appropriate. The Company refused to extend such recognition unless or until the Union is certified as such representative by the Board.

A statement of the Regional Director introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 Unit requested by the Union consists of the laboratory employees, namely research chemists, control chemists, and the entomologist, at the Company's Richmond plant. As stated elsewhere in this Decision, the principal business of the Company at this plant is the production of insecticides and fungicides. Until recently, it appears, all chemical research work in connection with this production, was conducted at the Company's Watsonville plant, in another section of the State. Now a research division is in the process of development at Richmond engaging the services of three research chemists and an entomologist. All of these have formal training and long experience in their respective fields and all parties agree that

¹ The Regional Director stated that the Union submitted 8 designations, all bearing apparently genuine original signatures. Seven designations were dated in October 1943, and 1 in August 1943. All bore the names of persons whose names appear on the Company's pay roll of December 6, 1943. There are 11 employees in the appropriate unit.

they are properly designated as professional employees. The function of the research division is to explore problems relating to production, to devise formulae for the betterment of the Company's products, to discover substitutes for materials difficult or now impossible to obtain, and to search for novel chemical combinations which may serve effectively as insecticides, fungicides, or related products. The entomologist is concerned with the reaction of insects to certain chemical combinations and is required to have a knowledge of chemistry. The research chemists consult with control chemists on production problems such as the efficacy of suggested substitutes and the results of certain routine tests or analyses. While the research employees presently work a 6-day, 48-hour week and are paid for overtime, the Company asserts that all soon will be placed on a flat salary basis without overtime compensation. All are under the direction of the chief research chemist. One spends half his time doing control work and two were recently promoted to their present work from the control division. All research chemists are members of the technical committee of the Company which meets with management at regular intervals to discuss technical aspects of the business relating to costs, profits, and production. As members of this committee, the Company contends, research chemists are recipients of confidential information and for that reason should not be included in any bargaining unit. The Company further contends that research chemists are "closely allied with management" and exercise supervisory authority in directing and instructing control chemists.

There are 7 control chemists who work a 6-day, 48-hour week also, and are under the supervision of the chief control chemist. They perform routine tests on and analyses of raw materials coming to the plant and make frequent checks of the chemical composition of products during the processes of manufacture in order to determine that they comply with standards set by the Company and governmental agencies. The record leaves the professional qualifications of the control chemists in doubt. The Company contends, and the Union denies, that they are craftsmen with skills comparable to those of draftsmen. One control chemist testified that he was a university graduate with a bachelor's degree in chemistry and that some of his fellow workers had similar educational backgrounds. The record persuades us that control chemists are more than technicians. While research chemists are entrusted, perhaps, with higher responsibilities and appear to have duties not so routine, the line of demarcation between the two groups from the standpoint of professional skill is not well defined. We have already remarked that one research chemist also does the work of a control chemist and that two research chemists were promoted from control work. It also appears that two of the

research chemists have designated the Union to represent them. These circumstances suggest that the two groups have a community of interest. While research chemists do advise and instruct the control chemists, particularly in the production of combinations formulated by the research chemists, we do not agree that this constitutes the exercise of supervisory authority. Such instruction is usual among employees of varying skill and responsibility and does not alone connote a management function. We agree that research chemists may possess information of a confidential nature but it does not appear that this information concerns labor relations and hence does not require the exclusion of research chemists from the unit.² The Company cites our decision in the *Shell Development Company* case³ in support of its contention that research chemists should not be included in a unit with control chemists. Our decision in that case is misconstrued. There we permitted professional employees to indicate whether or not they desired to be included in a bargaining unit with non-professional technical employees. We do not regard the two groups we have discussed here to be analogous.

We find, then, that all research chemists, the entomologist, and control chemists, employed at the Richmond plant of the Company, excluding the chief control chemist, the chief research chemist, and any 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 means of 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

² See *Matter of Warner Brothers Pictures, Inc., et al.*, 35 N. L. R. B. 739; see also *Matter of Creamery Package Manufacturing Company*, 34 N. L. R. B. 108.

³ *Matter of Shell Development Company, Inc.*, 38 N. L. R. B. 192.

DIRECTED that, as part of the investigation to ascertain representatives for the purpose of collective bargaining with California Spray-Chemical Corporation, Richmond, California, an election by secret ballot shall be conducted as soon 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 Twentieth 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 the 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 Federation of Architects, Engineers, Chemists and Technicians, Chapter #25, CIO, for the purposes of collective bargaining.