

In the Matter of NATIONAL CARBON COMPANY, INC., NIAGARA WORKS and LOCAL #85, UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, C. I. O.

Case No. 3-R-739.—Decided March 28, 1944

Mr. Milton A. Nixon, for the Board.

Mr. William C. Treanor, of New York City, for the Company.

Mr. Charles A. Doyle, of Niagara Falls, N. Y., for the C. I. O.

Mr. Ernest Curto, of Niagara Falls, N. Y., for the A. F. L.

Mr. Stanley Denlinger, of Akron, Ohio, and *Mr. Rinaldo Cappellini*, of Niagra Falls, N. Y., for District 50.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local #85, United Gas, Coke & Chemical Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of National Carbon Company, Inc., Niagara Works, Niagara Falls, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Niagara Falls, New York on March 2, 1944. The Company, the C. I. O., the Bricklayers, Masons and Plasterers, International Union, Subordinate Local 2, A. F. of L., herein called the A. F. L., and District 50, United Mine Workers of America, herein called District 50, appeared and participated.¹ All parties 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 an opportunity to file briefs with the Board.

¹ Although served with copy of the Notice of Hearing and the petition, the Independent Employees Union and the Building Trades Council failed to appear at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a New York corporation engaged at Niagara Falls, New York, in the manufacture of carbon and graphite products. During 1943, the Company used raw materials valued in excess of \$500,000, about 90 percent of which came from sources outside the State of New York, and manufactured finished products valued in excess of \$500,000, about 75 percent of which was sent to points outside that State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local #85, United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, Bricklayers, Masons and Plasterers International Union, Subordinate Local 2, affiliated with the American Federation of Labor, and District 50, United Mine Workers of America, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of certain of the Company's employees until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. 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.

² The Field Examiner reported that the C. I. O. submitted 366 authorization cards, 262 of which bore the names of persons appearing on the Company's pay roll of January 12, 1944, which contained the names of 887 employees in the alleged appropriate unit. The pay-roll list, however, includes the names of about 16 bricklayers, whom the C. I. O. does not desire in the unit.

District 50 submitted 121 authorization cards 98 of which bore the names of persons appearing on the aforesaid pay roll.

The Independent submitted no evidence showing its representation.

The A. F. L. submitted to the Trial Examiner at the hearing dues books showing current membership of all of the Company's bricklayers in that organization.

IV. THE APPROPRIATE UNIT

The parties stipulated that, except for the categories discussed below, all employees on the hourly pay roll of the Company at its Niagara Works, Niagara Falls, New York, at its three plants, namely, National, Acheson, and Republic, including checkers and store clerks, but excluding guards, clerical employees, office employees, salaried employees, and all supervisory employees, constitute an appropriate unit. In addition, District 50 would include bricklayers and watchmen, while the Company, the C. I. O., and the A. F. L. would exclude bricklayers, and all but the C. I. O. would also exclude the watchmen.³

The A. F. L. has represented the Company's bricklayers in a separate unit since 1914, and has dealt with the Company in their behalf in that craft unit. All of the Company's bricklayers are current dues-paying members of the A. F. L. In view of the long history of collective bargaining by the bricklayers on a craft unit basis, we shall exclude them from the unit which we find appropriate.

The Company employs a total of nine watchmen at its three plants. These watchmen are not in uniform, are unarmed, and are not militarized.⁴ They patrol the company properties to guard against fire and other hazards. Watchmen are paid on an hourly basis, receive the same vacation and all privileges as do other employees of the Company. We see no reason for excluding the watchmen. We shall include them in the unit.

We find that all employees on the hourly pay roll of the Company at its Niagara Works at its three plants, namely National, Acheson, and Republic, including checkers, store clerks, and watchmen, but excluding guards, clerical and office employees (except the checkers and store clerks), salaried employees, bricklayers, 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 The position of the C. I. O. as to the watchmen is not wholly clear. It does not include them among its exclusions, however.

⁴ The guards, excluded by stipulation, are militarized.

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 National Carbon Company, Inc., Niagara Works, Niagara Falls, New York, 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 Third 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 they desire to be represented by Local #85, United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, or by District 50, United Mine Workers of America for the purposes of collective bargaining, or by neither.