

In the Matter of CARBIDE AND CARBON CHEMICALS CORPORATION and  
INTERNATIONAL UNION OF OPERATING ENGINEERS, A. F. OF L.

In the Matter of CARBIDE AND CARBON CHEMICALS CORPORATION and  
INTERNATIONAL UNION OF COMMON LABORERS, LOCAL NO. 576, AFFIL-  
IATED WITH THE A. F. OF L.

Cases Nos. 9-R-1356 and 9-R-1367 respectively.—Decided July 31,  
1944

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

*Mr. R. J. Jamieson*, of Cleveland, Ohio, for the Engineers.

*Mr. A. C. Kaiser*, of Louisville, Ky., for the Laborers.

*Mr. John E. McKiernan*, of Louisville, Ky., for the Rubber Workers.

*Mr. Robert Silagi*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon petitions duly filed by International Union of Operating Engineers, A. F. of L., herein called the Engineers, and by International Union of Common Laborers, Local No. 576, affiliated with the A. F. of L., herein called the Laborers, each alleging that a question affecting commerce had arisen concerning the representation of employees of Carbide and Carbon Chemicals Corporation, Louisville, Kentucky, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Charles F. McErlean, Trial Examiner. Said hearing was held at Louisville, Kentucky, on May 31, 1944. The Company, the Engineers, the Laborers, and Synthetic Rubber Workers' Union, Local #72, affiliated with the Distillery Workers' International Union, herein called the Rubber Workers, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On May 22, 1944, the Board issued a Decision and Direction of Election in a prior case involving the Company,<sup>1</sup> a proceeding in which seven petitions were consolidated. One of these petitions, Case No. 9-R-1367, was filed by the Laborers. Upon receiving information of the existence of conflicting claims to the representation of certain employees sought by the Laborers, the Board issued a Supplemental Decision and Order staying the election previously ordered insofar as it pertained to the Laborers' unit, severing the Laborers' petition from that case and consolidating it with the case at bar.

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.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Carbide and Carbon Chemicals Corporation is a New York corporation which operates plants in many States, including the one involved here at Louisville, Kentucky. This plant is engaged in the manufacture of butadiene, an ingredient used in the manufacture of synthetic rubber. The principal material used by the Company in the manufacture of butadiene is ethyl-alcohol. The value of the raw materials purchased annually by the Company exceeds \$500,000, approximately 30 percent of which is obtained from sources located outside the State of Kentucky. The value of the finished products of the Company is in excess of \$500,000 per annum, of which 5 percent is shipped to points outside the State of Kentucky.

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

#### II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, International Union of Common Laborers, Local No. 576, and Synthetic Rubber Workers' Union, Local #72, affiliated with the Distillery Workers' International Union, are labor organization affiliated with the American Federation of Labor admitting to membership employees of the Company.

#### III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to any of the Unions as the exclusive bargaining representative of its employees until it has been certified by the Board in an appropriate unit.

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<sup>1</sup> *Matter of Carbide and Carbon Chemicals Corporation*, 56 N. L. R. B. 779

A statement of a Board agent, introduced into evidence at the hearing, indicates that each of the unions represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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.

#### IV. THE APPROPRIATE UNITS

In a prior decision<sup>3</sup> involving the same plant of the Company the Board dealt with the problem of establishing units appropriate for collective bargaining within the maintenance department of the Company. In the instant case, the Unions seek appropriate units within the Company's production department.

The Company contends that the most appropriate unit for its plant at Louisville would be one unit for all production and maintenance employees; however, in view of the establishment of separate units for the maintenance employees, the Company now contends that a single unit for its production department is appropriate.

As it maintained in the earlier case, the Laborers seeks a separate unit comprised of all maintenance laborers in which it would include the coal handlers and janitors. The Company, the Engineers, and the Rubber Workers are agreed upon the inclusion of the bulk of the production employees, namely, the chemical operators, boiler operators, water plant operators, and chemical operators (alcohol). These parties likewise are agreed upon the exclusion of the chief operators of the various classifications enumerated above, as well as two classifications of employees who are a part of the maintenance department; process safety testers and helpers, and stores clerks (toolroom). Similarly, all parties agree to exclude the militarized guards and sergeants of the plant-protection department. The parties are in dispute, however, with respect to various classifications of employees more fully discussed below.

*Laboratory analysts:* There are presently 11 such employees who analyze samples of materials which are drawn from various points throughout the production units in order to insure uniformity. The continuance of production depends directly upon these analyses and

<sup>2</sup> The Field Examiner reported that the Engineers submitted 69 authorization cards, 68 of which bore the names of persons appearing on the Company's pay roll of February 12, 1944, which contained the names of 149 employees in the alleged appropriate unit.

The Rubber Workers submitted 40 authorization cards, 25 of which bore the names of persons appearing on the aforesaid pay roll which contained the names of 68 employees in the alleged appropriate unit.

The Laborers submitted 9 designations, all of which bore the names of employees whose names appeared on the said pay roll, containing 16 names within the unit claimed to be appropriate by the Laborers.

<sup>3</sup> See footnote 1, *supra*.

frequently steps in the production processes are changed or varied as a result thereof. Specialized college training is unnecessary for the Company trains its analysts to perform this function in accordance with certain specified procedures. The Rubber Workers and the Company would include them in the unit of production employees, and the Engineers would exclude them. Since these employees perform more or less routine tests closely related to the production process, we shall include them within the unit.

*Laboratory samplers:* There are four employees in this classification whose duties involve the collection of samples and their delivery to the laboratory analysts. The Rubber Workers and the Company would include and the Engineers would exclude them. Since they are part of the production process, we shall include them in the unit.

*Stores clerks:* There are 11 employees in this classification whose work consists of receiving, storing, and releasing all types of materials used by the Company. They are in the nature of stockroom employees. The Rubber Workers and the Company would include and the Engineers would exclude them. Since they are part of the production department, we shall include them in the unit.

*Laborers experienced (stores):* There are two such employees who work with the stores clerks moving and handling materials. The parties adopt the same positions with respect to these laborers as they do with respect to the stores clerks. We shall include them in the unit.

*Yard clerk:* There is one employee so classified who works in conjunction with the railroad company, keeping records of incoming and outgoing rail shipments, and directing the spotting of cars on the Company's siding. The Rubber Workers and the Company would include him, the Engineers would exclude him. We shall include him in the unit.

*Firemen:* Two firemen continually patrol the plants checking the buildings and fire equipment. They are used as fire fighters by the Company and are expressly trained in fighting chemical fires. The Rubber Workers and the Company would include them, the Engineers would exclude them. We shall include them in the unit.

*Instrument repairmen; instrument repairmen helpers:* There are five employees in these classifications. Their duties consist of repairing and maintaining the large number of mechanical instruments used by the Company. All controls are operated automatically by means of intricate, sensitive instruments which require continuous inspection, repair, and adjustment. Instrument repairmen are considered and carried as part of the maintenance department by the Company. The cost of their operation is charged to the maintenance

department. The Company and the Rubber Workers would exclude them on the ground that they are not part of the production department. The Engineers, however, would include them on the ground that they are the type of employees over whom it has jurisdiction. The record establishes that the instrument repairmen are highly skilled craftsmen engaged solely in maintenance work and whose duties are totally unlike the duties of the various operators who perform no repair work. We shall, therefore, exclude these employees from the production unit.

*Escort drivers:* The Company has two employees in this classification, both of whom are women. They are attached to the plant-protection force but are not militarized. Their jobs consist of escorting visitors around the plant and driving cars on errands. These employees are not considered part of either the production or maintenance departments. The Engineers and the Company would exclude them on that ground, the Rubber Workers would include them. Since they are not part of the production operations, we shall exclude them from the unit.

*Truck drivers:* There are three truck drivers assigned to the maintenance department. They drive trucks within the plant grounds for the purpose of moving maintenance department materials. The Company and the Engineers would exclude them, the Rubber Workers would include them. Inasmuch as they are not part of the production department, we shall exclude them from the unit.

*Safety inspector:* There is one such employee whose duties are to inspect and maintain equipment, such as goggles, protective clothing, respirators, and safety ladders used in and around the production department. He usually patrols the plant for the purpose of determining and supplying the needs for protective equipment. The Company and the Rubber Workers would include him; the Engineers would exclude him. We shall include him in the unit.

*Light truck driver:* There is one chauffeur who drives a light truck to and from the city of Louisville transporting mail and light materials. The Engineers would exclude him, the Company and the Rubber Workers would include him. In view of the fact that he is attached to the production department and his duties apparently are part of the production process, we shall include him in the unit.

*Chief shipping clerk:* The chief shipping clerk checks the conditions of tank cars, pursuant to Interstate Commerce Commission regulations, to determine whether the cars are suitable for the shipment of butadiene. Despite his title, he performs no supervisory functions. The Engineers would exclude him, the Company and the Rubber Workers would include him. Since he is part of the production operations, we shall include him in the unit.

*Laborers experienced (coal)*: There are 11 such employees who are also known as coal unloaders or coal handlers. They unload coal from railroad cars onto a conveyor system which carries the coal into bins at the plant. From there the coal is sent through a pulverizing machine and finally fed to the boilers which generate steam. These employees are not utilized for any other purpose and are considered part of the production department. The Engineers, the Rubber Workers, and the Company would include them in the unit of production employees. The Laborers, in Case No. 9-R-1367, moved to amend its petition to include these employees in its unit along with certain laborers in the maintenance department. The Board granted the motion and included the coal handlers in the unit found appropriate in that case, at the same time reserving the right to amend its finding with respect to the laborers' unit upon a showing of changed circumstances. The Laborers contends that these employees are unskilled laborers and hence fall within its jurisdiction. However, the work of these employees is closely related to and considered part of the production operations of the Company, and since they are now sought to be represented within the production unit by the two other labor organizations involved herein, we shall include them in the production unit.

*Janitors*: The Company employs 22 janitors who perform the usual type of janitorial duties. Janitors are considered part of the production department; the hazards inherent in chemical production demand effective clean-up work so as not to jeopardize operations. The janitors generally work under the instructions of production department supervisors. The Rubber Workers and the Company would include them since they are carried as part of the production department, the Engineers, however, would exclude them. At the hearing, in Case No. 9-R-1367, the Laborers amended its petition to include janitors. Like the coal handlers, however, the janitors are not concerned in any way with ordinary maintenance and repair work but are an integral part of the production organization. We shall, therefore, include them in the production unit.

We find that all chemical operators, boiler operators, water plant operators, chemical operators (alcohol), laboratory analysts, laboratory samplers, stores clerks, laborers experienced (stores), yard clerk, firemen, coal handlers, janitors, safety inspector, light truck driver, and the chief shipping clerk of the Company employed at its Louisville, Kentucky, plant, but excluding all instrument repairmen and helpers, escort drivers, guards and sergeants, truck drivers, process safety testers and helpers, stores clerks (toolroom), chief operators, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employ-

ees; 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.

We find that all maintenance laborers employed at the Company's Louisville, Kentucky, plant, excluding janitors and coal handlers, tool-room employees, foremen, assistant foremen, labor supervisors, 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 separate appropriate unit 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 questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

#### 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, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Carbide and Carbon Chemicals Corporation, Louisville, Kentucky, 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 Ninth Region, acting in the 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 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 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections; (1) to determine whether the employees

in the production department unit described in Section IV, above, desire to be represented by International Union of Operating Engineers, A. F. of L., or by Synthetic Rubber Workers' Union, Local #72, affiliated with the Distillery Workers' International Union, for the purposes of collective bargaining, or by neither; (2) to determine whether or not the employees in the maintenance laborers' unit described in Section IV, above, desire to be represented by International Union of Common Laborers, Local No. 576, affiliated with the A. F. of L., for the purposes of collective bargaining.