

In the Matter of GENERAL CHEMICAL COMPANY, BUFFALO WORKS and
UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, C. I. O.

Case No. 3-R-840.—Decided September 9, 1944

Kenefick, Cooke, Mitchell, Bass & Letchworth, by *Mr. Lyman M. Bass*, of Buffalo, N. Y., for the Company.

Mr. Charles A. Doyle, of Niagara Falls, N. Y., for the United.

Mr. Neil J. Cunningham, of Buffalo, N. Y., for the A. F. of L.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Gas, Coke and Chemical Workers of America, C. I. O., herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of General Chemical Company, Buffalo Works, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Buffalo, New York, on August 8, 1944. At the commencement of the hearing the Trial Examiner granted a motion of Chemical Workers Union, Local 19636, A. F. of L., herein called the A. F. of L., to intervene. The Company, the United, and the A. F. of L. appeared at and participated in the hearing.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the A. F. of L. moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motion is hereby denied. 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.

¹ Although District 50, United Mine Workers of America, was served with Notice of Hearing, it did not appear.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Chemical Company is a New York corporation operating a plant at Buffalo, New York, known as the Buffalo Works, where it is engaged in the manufacture and distribution of heavy chemicals. Over 50 percent of the raw materials used by the Buffalo Works during 1943 was shipped to it from points outside the State of New York. During the same period the Company shipped about 20 percent of its finished products to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

United Gas, Coke and Chemical Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Chemical Workers Union, Local 19636, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the United as the exclusive collective bargaining representative of its employees until such time as the United is certified by the Board.

On September 29, 1942, the Company and the A. F. of L. entered into an exclusive bargaining contract. The contract provides that it shall remain in effect for 1 year and from year to year thereafter unless notice of a desire to terminate is given by either party thereto 30 days prior to any annual expiration date. The United made its claim upon the Company during April 1944. Inasmuch as the contract is about to expire² and the C. I. O. made its claim prior to August 29, 1944, the date upon which the contract would automatically have renewed itself, we find that the contract does not constitute a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the United represents a substantial number of employees in the unit hereinafter found to be appropriate.³

² *Matter of Atlantic Footwear Co., Inc.*, 5 N L R B. 252.

³ The Field Examiner reported that the United presented 113 membership application cards bearing the names of persons who appear on the Company's pay roll for the period

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 United and the A. F. of L. urge that all hourly paid production, utility, and maintenance employees at the Buffalo Works of the Company including watchmen, janitors, and non-militarized guards, but excluding chemists, office employees, and supervisory employees constitute an appropriate bargaining unit. The only controversy with respect to the unit concerns guards. The United and the A. F. of L. urge that they be included in the unit and the Company that they be excluded.

The Company employs two guards who are bonded, uniformed, and deputized by the city of Buffalo. In addition, the Company employs two watchmen who are not uniformed. Both classes of employees perform identical duties and functions. It further appears that one of the guards is characterized by the Company as a head guard. The head guard effectively recommends changes in the employment status of the watchmen and guards, and prepares work schedules for them. We find that the head guard is a supervisory employee, and as such, we shall exclude him from the unit. It appears that none of the guards or watchmen are militarized. Under the circumstances, we find that the watchmen and guards, other than the head guard, should be included in the unit.

We find that all hourly paid production, utility and maintenance employees at the Buffalo Works of the Company, including watchmen, non-militarized guards, and janitors, but excluding chemists, office employees, the head guard, 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.

ending July 17, 1944. There are approximately 125 employees in the appropriate unit. The A. F. of L. did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with General Chemical Company, Buffalo Works, Buffalo, New York, 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 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 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 employees 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 United Gas, Coke and Chemical Workers of America, C. I. O., or by Chemical Workers Union, Local 19636, A. F. of L., for the purposes of collective bargaining, or by neither.