

In the Matter of E. I. DUPONT DE NEMOURS & COMPANY, ELECTRO-CHEMICALS DEPARTMENT *and* DISTRICT 50, UNITED MINE WORKERS OF AMERICA

In the Matter of E. I. DUPONT DE NEMOURS & COMPANY, ORGANIC CHEMICALS DEPARTMENT *and* DISTRICT 50, UNITED MINE WORKERS OF AMERICA

*Cases Nos. 15-R-1175 and 15-R-1198 respectively.—Decided  
September 23, 1944*

*Mr. Peter B. Collins*, of Wilmington, Del., for the Company.

*Mr. John B. Whitson*, of Baton Rouge, La., for District 50.

*Mr. Arvil Inge*, of Fort Worth, Tex., and *Messrs. J. B. Voorhees*, *J. D. Parker*, and *E. J. Bourg*, of Baton Rouge, La., for the AFL.

*Mr. Fabio G. Halphen, Jr.*, of Baton Rouge, La., for the Association.

*Mr. Thomas A. Ricci*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon petitions duly filed by District 50, United Mine Workers of America, herein called District 50, each alleging that a question affecting commerce had arisen concerning the representation of employees of E. I. DuPont de Nemours & Company, Baton Rouge, Louisiana, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at Baton Rouge, Louisiana, on August 14, 1944. The Company, District 50, the American Federation of Labor, herein called the AFL, and the DuPont Consolidated Employees Association, herein called the Association, 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.<sup>1</sup>

<sup>1</sup> Although duly served with Notice of Hearing, Electrochemical Division of the DuPont Baton Rouge Plant Employees Union did not appear.

The rulings of the Trial Examiner 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

The Company is a Delaware corporation engaged in the manufacture of general chemical products at numerous plants throughout the United States, one of which is located at Baton Rouge, Louisiana. This proceeding solely concerns the employees of the Baton Rouge plant. This plant is owned by the Ethyl Corporation, and sections of the plant are operated by the Company for the manufacture of tetraethyl lead.

During the past 12 months the Company purchased raw materials for use at the Baton Rouge plant having a value in excess of \$5,000,000, approximately 80 percent of which was shipped from points outside the State of Louisiana. During the same period approximately 60 percent of the total products manufactured at this plant was shipped to points outside the State of Louisiana. The plant's total production exceeded \$10,000,000 in value.

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

#### II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

The American Federation of Labor is a labor organization admitting to membership employees of the Company.

DuPont Consolidated Employees Association is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to District 50 as the exclusive representative of certain of its employees until District 50 has been certified by the Board in an appropriate unit or units.

Statements by Board agents, introduced into evidence at the hearing, indicate that District 50 represents a substantial number of employees in each of the units it alleges to be appropriate.<sup>2</sup>

<sup>2</sup> The Field Examiner reported that, in connection with Case No 15-R-1175, involving the electrochemicals department, District 50 submitted 175 authorization cards, and that the alleged appropriate unit contained the names of 188 employees.

The Field Attorney reported that, in connection with Case No 15-R-1198, involving the organic chemicals department, District 50 submitted 510 membership cards, that a

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 Company's operations at the Baton Rouge plant are divided into two departments, the organic chemicals department, which was created in 1937 and produces tetraethyl lead, and the electrochemicals department, which was created in 1939 and produces sodium. The earliest bargaining at this plant took place in 1938 when the Baton Rouge Industries Collective Bargaining Agency, herein called the Agency, was recognized by the Company as the representative of its members among the employees in the organic chemicals department. After the electrochemicals department started functioning in 1939, the Agency extended its membership to employees of the new department and was recognized by the Company in that year as the representative of its members among all the Company's employees in the plant. Periodic meetings were held between representatives of the Agency and the Company's plant manager to discuss wages, hours, and conditions of employment at the plant, the last such conferences between these parties having taken place in December 1939.

In 1941 the Association came into existence and was recognized by the Company as having replaced the Agency and as the exclusive bargaining representative of all the Company's employees at the plant. From 1941 to 1943 members of the Association held meetings with the Company's plant manager and discussed matters pertaining to wages, hours, and conditions of employment affecting employees of the entire plant. In 1943 a majority of the employees in the electrochemicals department formed the Electrochemicals Division of the DuPont Baton Rouge Plant Employees Union, and the Association apprised the Company that it no longer represented the employees of that department. From 1943 until June 1944, the newly formed organization held conferences with the manager of the electrochemicals department to discuss wages, hours, and conditions of employment concerning that department's employees. During that time the Association continued to meet with the plant manager to discuss working conditions of the employees in the organic chemicals department.

spot check of every tenth card was made, and that, of 51 signatures checked, 51 were found on the Company's pay roll, which contained 957 employees in the alleged appropriate unit.

The Trial Examiner stated on the record that the AFL submitted to him 99 membership cards, and that a spot check on the Company's pay roll indicated that the AFL had a substantial interest in the unit it claimed to be appropriate.

The Trial Examiner further stated on the record that the Association submitted to him a number of petitions containing 104 names, and that a spot check of every tenth name on the Company's pay roll indicated that all 104 names appeared on this pay roll.

We regard as significant the fact that, from 1938 to 1944, the terms of employment and working conditions agreed upon at the various conferences held by all of the foregoing labor organizations with the Company were set forth in minutes or notes of meetings which were signed by the Company's representatives and representatives of the various organizations. At no time, we note, did the Company enter into a formal contract with any of these labor organizations.

The Company and the AFL contend that the employees of the organic chemicals and the electrochemicals departments, together form a single appropriate unit. District 50 and the Association contend that the history of collective bargaining from 1943 to 1944 reveals a pattern of bargaining on a separate department basis and that the Board consequently should find two units appropriate, one for each department. However, the Company and its employees have never executed a written contract for a fixed term covering wages, hours, and other conditions of employment for employees in either department. The informal bargaining arrangements described above do not, in our opinion, achieve true stability of labor relations.<sup>3</sup> We note, moreover, that, from 1938 until 1943, the Company dealt on the basis of a single unit with the various labor organizations which made their appearance. We are not convinced that the appropriateness of the bargaining unit or units should be predicated upon the Company's past bargaining arrangements.

Both departments are located in the same fenced-in area and are connected by pipe lines. Their functions are interrelated. Thus, the electrochemicals department produces sodium which is pumped to the organic chemicals department for the production of tetraethyl lead. A shut-down of one would curtail the operation of the other. The manager of the organic chemicals department is in charge of both departments. There is a common personnel office, one laborer pool for the entire plant, one pay roll, one timekeeping department, one fire and plant-protection unit, and one maintenance department. All the Company's employees have the same job classifications, wages, hours, merit pay system and general conditions of work. There is some transfer of employees between departments. Under the circumstances, particularly in view of the apparent community of interest of all the Company's employees, the integrated nature of the Company's operations, and the absence of a compelling history of collective bargaining, we shall include the employees of both departments in a single unit.<sup>4</sup>

We find that all production and maintenance employees of the Company at the Baton Rouge plant, including working leaders, laboratory employees, shipping and receiving employees, but exclud-

<sup>3</sup> See *Matter of Corn Products Refining Company*, 52 N. L. R. B. 1324.

<sup>4</sup> See *Matter of Godchaux Sugars, Inc.*, 26 N. L. R. B. 33.

ing technical employees, office and clerical employees, foremen; and all 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.<sup>5</sup>

#### 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 the 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 E. I. DuPont de Nemours & Company, Baton Rouge, Louisiana, 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 Fifteenth 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 those 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 District 50, United Mine Workers of America, by the American Federation of Labor, or by the DuPont Consolidated Employees Association, for the purposes of collective bargaining, or by none of these organizations.

<sup>5</sup> All parties stipulated to the classifications of employees to be included and excluded