

In the Matter of CINCINNATI CHEMICAL WORKS, INC. and DISTRICT 50,  
UNITED MINE WORKERS OF AMERICA

In the Matter of CINCINNATI CHEMICAL WORKS, INC. and CINCINNATI  
CHEMICAL WORKS, INC., EMPLOYEES REPRESENTATIVE ASSOCIATION

Cases Nos. 9-R-1543 and 9-R-1546 respectively.—Decided October 12,  
1944

*Mr. James R. Clark*, of Cincinnati, Ohio, for the Company.

*Mr. Stanley Denlinger*, of Akron, Ohio, and *Messrs. Ralph Courtley*  
and *Richard D. Harrell*, of Cincinnati Ohio, for District 50.

*Mr. R. T. Dickerson*, of Cincinnati, Ohio, for the Association.

*Mr. Ben Grodsky*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE\*

Upon separate petitions duly filed by District 50, United Mine Workers of America, herein called District 50, and Cincinnati Chemical Workers, Inc., Employees Representative Association, herein called the Association, alleging that questions affecting commerce had arisen concerning the representation of employees of Cincinnati Chemical Works, Inc., Cincinnati, Ohio, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on August 31, 1944. The Company, District 50, and 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. 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

Cincinnati Chemical Works, Inc., is a Delaware corporation engaged in the manufacture of dyes, insecticides, and other chemicals at two plants located at St. Bernard, Ohio, and Norwood, Ohio, respectively. The value of the Company's annual purchases of raw materials is in excess of \$500,000, of which approximately 75 percent is received from sources outside the State of Ohio. The annual value of its finished products is in excess of \$500,000, of which approximately 90 percent is shipped to points outside the State of Ohio.

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.

Cincinnati Chemical Works, Inc., Employees Representation 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, and to the Association, as the exclusive bargaining representative of its employees until either District 50 or the Association has been certified by the Board in an appropriate unit.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that both District 50 and the Association represent a substantial number of employees in the unit each claims to be appropriate.<sup>1</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.

<sup>1</sup> The Field Examiner reported that District 50 submitted 82 authorization cards, 50 of which bore the names of persons appearing on the Company's pay roll of August 9, 1944, which contained the names of 149 employees in the unit alleged by District 50 to be appropriate; and that 3 of the cards were not dated, and the others dated as follows: 44 prior to 1944, and 3 in 1944.

The Field Examiner further reported that the Association submitted petitions authorizing the Association to act as bargaining representative, which bore 191 apparently genuine original signatures; that the names of 181 persons appearing on the petitions were contained in the aforesaid pay roll, which contained the names of 353 employees in the unit alleged by the Association to be appropriate, and that the petitions were dated on July 31, 1944, or after.

## IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

Except for factory clericals and cooks, District 50, the Association, and the Company agree upon the composition of the appropriate unit. However, District 50 contends that the St. Bernard plant employees comprise an appropriate unit, whereas the Association and the Company assert that the employees of both the St. Bernard and the Norwood plants constitute a single appropriate unit.

The two plants in question are about 3 miles apart, and while both are in the area generally known as greater Cincinnati, they are in two separate incorporated municipalities. The Company has about 179 employees at its St. Bernard plant and 285 employees at its Norwood plant. All hiring is done at the Norwood plant. The St. Bernard plant produces dyes, intermediates, and insecticides. Although both the dyes and intermediates are sent by the St. Bernard plant to the Norwood plant for further processing before shipment, insecticides manufactured at St. Bernard are shipped by it directly to purchasers. Most raw materials used at St. Bernard are shipped directly by rail or truck to that plant, while some dye-stuffs and intermediates are shipped from the Norwood plant.

The Company's main office, containing records for both plants, is located at the Norwood plant. But in the St. Bernard plant there are office clerical employees who keep factory records of incoming and outgoing materials, maintain plant production and stock records, and check the time cards of the St. Bernard employees against the time book. While pay rolls for both plants are made up at Norwood, pay checks are given to the foremen at both plants for distribution.

There is one vice president who is in charge of production for both plants. His office is in the Norwood plant, and he divides his time equally between both plants. Each plant has its own manufacturing departments, and heads of such departments. There is some evidence of interchange of employees between the plants.

The record indicates that there is no history of effective collective bargaining between the Company and any labor organization. District 50 has limited its organizing activities to the employees of the St. Bernard plant, whereas the Association has extended its organizing activities to the employees of both plants.

It is clear from the foregoing facts that, as is urged by the Association in its brief, employees of the two plants might properly be considered as a single bargaining unit. On the other hand, we are of the opinion that the facts also indicate that the employees of each plant could comprise a separate appropriate unit.<sup>2</sup> Under the circumstances

<sup>2</sup> See *Matter of Pickands Mather & Company*, 25 N. L. R. B. 1100.

we shall make no final determination at this time of the appropriate unit or units.

As indicated above, the parties are not in agreement with respect to the inclusion or exclusion of factory clericals and cooks.

*Factory clericals:* The parties are agreed that stockroom keepers, who physically handle stock and whose clerical work, if any, is incidental, should be included. Several employees, however, work in the plants away from the main offices, doing clerical work relative to production and stock records. District 50 would exclude, and the Association would include, such factory clericals. The Company's position is neutral. Inasmuch as these factory clericals work in separate offices and appear to have little contact with production employees, we shall exclude them.<sup>3</sup>

*Cooks:* There is one part-time employee at St. Bernard and there are three at Norwood who are cooks. District 50 would exclude, and the Association would include, cooks. The Company's position is neutral. They have no direct connection with production and maintenance employees, and we shall exclude them.<sup>4</sup>

As above indicated, we shall make no final determination at this time of the appropriate unit or units. We shall direct that the questions concerning representation which have arisen be resolved by means of separate elections by secret ballot among the employees in the voting groups described below 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:

1. All employees of the Company's St. Bernard plant, including stockroom keepers, but excluding chemists, factory and office clerical employees, armed guards, nurses, first-aid men, cooks, plant engineers, 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;

2. All employees of the Company's Norwood plant, including stockroom keepers, but excluding chemists, factory and office clerical employees, armed guards, nurses, first-aid men, cooks, plant engineers, 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.

Upon the results of these elections will depend, in part, our determination of the appropriate unit or units. In the event the employees in both groups select the Association as their bargaining representative, they thereby will have indicated their desire to constitute a single appropriate unit.

<sup>3</sup> *Matter of Max Kaplan and Jacob Kaplan, etc.*, 46 N. L. R. B. 1057.

<sup>4</sup> *Matter of Dempster Brothers, Inc.*, 58 N. L. R. B. 151.

## 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 Cincinnati Chemical Works, Inc., Cincinnati, Ohio, 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 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 two voting groups described 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 the Company's employees in the voting group described in paragraph 1 of Section IV, above, desire to be represented by District 50, United Mine Workers of America, or by Cincinnati Chemical Works, Inc., Employees Representative Association, for the purposes of collective bargaining, or by neither; and to determine whether or not the employees in the voting group described in paragraph 2 of Section IV, above, desire to be represented by Cincinnati Chemical Works, Inc., Employees Representative Association, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.