

In the Matter of BAKELITE CORPORATION and UNITED GAS, COKE & CHEMICAL WORKERS, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 4-R-1578.—Decided January 31, 1945

Mr. William C. Treanor, of New York City, and *Mr. A. H. Oak*, of Bound Brook, N. J., for the Company.

Rothbard and Talisman, by *Mr. Clarence Talisman*, and *Mr. David Elliot*, of Newark, N. J., for the United.

Mr. Abraham Schlesinger, of New York City, and *Mr. Roy Dugan*, of Newark, N. J., for District 50.

Mr. Adam B. Chase, of Manville, N. J., and *Mr. Carl Rehder*, of Somerville, N. J., for the Independent.

Mr. Julius G. Serot, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Gas, Coke & Chemical Workers, affiliated with Congress of Industrial Organizations, herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of Bakelite Corporation, Bound Brook, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur, Trial Examiner. Said hearing was held at New Brunswick, New Jersey, on December 14, 1944. The Company, the United, Independent Union of Bakelite Workers, Inc., herein called the Independent, and District 50, United Mine Workers of America,¹ herein called District 50, 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. During the hearing, and again at the close thereof, both the Company and the Independent moved to dismiss the petition. The

¹ Over the objections of the Company and of the Independent, the Trial Examiner granted the motion by District 50 to intervene in this proceeding.

Independent also moved for a check of authorization cards against the pay roll. The Trial Examiner referred the three motions to the Board for determination. For the reasons set forth in Section III, *infra*, these motions are hereby denied.

The Independent also moved that any direction of election provide for balloting by mail of employees of the Company now in the armed forces of the United States, or, in the alternative, that no election be held at present. This motion was also referred to the Board by the Trial Examiner. For the reasons stated in Section V, *infra*, we hereby deny this motion.

During the hearing, District 50 moved to amend the caption of the proceeding to show its interest, and the Trial Examiner also referred this motion to the Board. Since the caption is correct as set forth, this motion is hereby denied. After the close of the hearing, the Independent and the Company moved separately for oral argument. Both of these motions are hereby denied. 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 this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bakelite Corporation is a New Jersey corporation operating a plant at Bound Brook, New Jersey, where it is engaged in the manufacture of bakelite and Vinylite, plastics, and allied products. The Company purchases raw materials for use in its Bound Brook plant valued in excess of \$500,000 annually, more than 50 percent of which is shipped to it from points outside the State of New Jersey. Products valued in excess of \$500,000 are manufactured annually and more than 50 percent of such products is shipped to points outside the State.

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

Independent Union of Bakelite Workers, Inc., is a labor organization admitting to membership employees of the Company.

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

III: THE QUESTION CONCERNING REPRESENTATION

As a consequence of a petition filed by United on September 24, 1943, the Board, on November 23, 1943, directed an election² which resulted in the certification of the Independent as the bargaining representative³ of the employees of the Company, on December 29, 1943. On October 22, 1943, after the filing of the petition but prior to the direction made by the Board, the Independent entered into a collective bargaining agreement with the Company and, since the election was won by the Independent, that agreement remained effective. It provided that it expire on December 31, 1944, subject to a 30-day notice automatic renewal clause.⁴ It is conceded that in October 1944, the United made written demand for recognition as the bargaining representative and that the Company deferred action on such demand pending action by the Board, the petition herein having been filed, apparently, on the same day that demand was made upon the company.

A statement of a Board agent, introduced into evidence at the hearing, over the objections of the Company and the Independent, indicates that United represents a substantial number of employees in the unit hereinafter found appropriate.⁵ The Board agent made no check of the cards against the Company's pay roll. Instead, apparently relying upon the showing made by the petitioner in the 1943 election, the agent made the following notation upon the report submitted: "Because of showing of labor organizations and low rate of turnover, pay roll was not checked." The record indicates that the Company put no obstacle in the way of a check by the Board agent.

The Company and the Independent now assert that the refusal by the Board agent to check the cards against the pay roll constitutes a failure of proof on the part of the petitioner.

The issue is two-fold. It is contended that since there is no proof of the authenticity of the cards submitted by the petitioner and by District 50, there is no indication that a substantial number of the

² *Matter of Bakelite Corporation*, 53 N. L. R. B. 824.

³ In that election, this petitioner polled 511 votes and the Independent polled 798 out of a total vote of 1,323. There were then 1,499 eligible voters. District 50 did not participate.

⁴ The contract was still in force when the instant petition was filed. However, since the petition was filed prior to the automatic renewal date, no claim is made that the contract is a bar.

⁵ The Field Examiner reported that the United submitted 596 cards, all of which bore apparently genuine original signatures; that of these 596 cards, 59 were undated, 21 were dated in November 1944, and the remainder were dated between July 1944, and October 1944, inclusive.

District 50 submitted 156 cards, all of which bore apparently genuine original signatures. Of these 156 cards, 21 were dated in November 1944, 133 in October 1944, and 2 were undated.

The pay roll for the period ending November 13, 1944, contained the names of 1,560 employees in the alleged appropriate unit.

The Independent relies upon its contract with the Company to show its interest in the proceedings.

employees of the Company desire a new bargaining representative⁶ and that, this petitioner having polled but 511 votes as against 798 for the Independent in the 1943 election, it must now submit evidence indicating that a majority of the employees desire a change in the bargaining representative. We find no merit in either contention. Authorization cards are submitted solely as a guide for the use of the Board, and its Regional Directors, as a safeguard against frivolous proceedings.⁷ The Board has not established any fixed standards for the verification of cards used for this purpose, and the mere suggestion, without proof, that those here in question may be fictitious is not sufficient to warrant further investigation. As to the second point, where, as here, a year has elapsed since a previous election, we do not require more than the showing ordinarily deemed substantial to justify a determination of representatives.

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 unit certified by the Board after the 1943 election included all hourly paid production and maintenance employees at the Bound Brook plant of the Company,⁸ excluding office and clerical employees, guards, salaried employees who perform administrative, professional, or technical duties, 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. All of the parties have stipulated that the unit shall now be the same as previously found by the Board subject, however, to a request by the Independent that the appropriate unit shall include guards, watchmen, and one temporary clerical or messenger employee. The United and District 50 desire to exclude guards, watchmen, and the messenger employee.

The guards are militarized plant police, having been sworn in as auxiliary military police by the United States Army. They are uniformed, carry arms, and perform such duties as guarding the Company's property, stopping vehicles at the gate to see that any material on the vehicles will not endanger the plant, and checking employees entering or leaving the premises to prevent "contrabrand materials"

⁶ Although it was claimed at the hearing that some of the cards submitted were fraudulent, neither the Company nor the Independent made any offer of proof of fraud.

⁷ "The showing of substantial representation is an administrative requirement of the Board, to satisfy it as a preliminary matter that there is sufficient showing to justify proceeding with the investigation of representatives." *Matter of Atlas Powder Company*, 43 N. L. R. B. 757, 759 (footnote). See also *Matter of Amos-Thompson Corporation*, 49 N. L. R. B. 423, 425 (footnote).

⁸ Auxiliary employees, who apparently are part and parcel of the maintenance force of the plant, and part-time employees were included in the unit previously certified and are also now included by stipulation in the present appropriate unit.

from being carried into or out of the plant. Although the guards were excluded by the Board in its prior certification, the Independent has consistently bargained for all hourly paid employees, including the guards, watchmen, and the messenger. It is our policy to exclude from units of production and maintenance employees plant-protection employees who are militarized, carry arms, and perform monitorial duties,⁹ and we shall therefore exclude the guards.

The watchmen are uniformed but not armed. The record indicates that they have no monitorial duties, other than to warn an employee against smoking, as a part of the fire precautions. They are under the supervision of the captain of the guards but apparently have no other connection with the guards, except that they may be promoted to the position of a guard and thereby earn an additional 5 cents an hour. They may also, and sometimes are, up-graded to production jobs, and they apparently enjoy the same vacation and other employment benefits as do the production and maintenance employees. They patrol the plant and check on losses of various kinds, particularly fire and material losses. They have clock stations around the plant and they punch these stations on the clock which they carry. These watchmen, not having been specifically excluded by the prior certification, were inferentially included in the unit and we see no reason why they should not now be specifically included in the appropriate unit.¹⁰

The messenger is a schoolboy who works after school hours and on Saturdays. He is paid on an hourly basis because of his part-time activity, and it would seem, it is because of this method of payment that the Company and the Independent seek to have him included in the appropriate unit. The record indicates that his duties are purely clerical in nature and that he is obviously a part of the clerical force of the Company. We shall exclude the messenger.

We find that all hourly paid production, maintenance, and auxiliary employees at the Bound Brook plant of the Company, including part-time employees and watchmen, but excluding office and clerical employees, guards, salaried employees who perform administrative, professional, or technical duties, 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 em-

⁹ *Matter of Ingalls Shipbuilding Corporation*, 59 N. L. R. B. 924.

¹⁰ *Matter of Chicago Rawhide Manufacturing Company*, decided in December 1944, and reported in 59 N. L. R. B. 1234.

ployees 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.¹¹

The Independent contends that "elections in various plants should be status quo until after the peace or if elections will be held men and women in service from the Bakelite Corporation should have a right to vote," and that employees in the armed forces "have a definite and fixed right in the contract which is made between the employer and the collective bargaining agency." The Independent points out that 724 employees of the plant are now in military service.

For reasons fully set forth in prior decisions,¹² we shall permit only those employees on military leave who present themselves at the polls to vote, and we have, except as herein stated, denied the motion of the Independent.

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 Bakelite Corporation, Bound Brook, New Jersey, 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 Fourth 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 CIO/UGCCWA, Plastics Division, or by District 50, United Mine Workers of America (Chemical Division), or by Independent Union of Bakelite Workers, Inc., for the purposes of collective bargaining, or by none of the aforesaid organizations.

¹¹ At the hearing, the United requested that its name appear on the ballot as CIO/UGCCWA, Plastics Division.

¹² *Matter of Mine Safety Appliances Co.*, 55 N. L. R. B. 1190, 1193-1195.