

In the Matter of ROHM & HAAS COMPANY and INTERNATIONAL UNION  
OF OPERATING ENGINEERS, LOCAL #541, A. F. OF L.

*Case No. 4-R-1588.—Decided February 12, 1945*

*Mr. J. Arvid Jonsson*, of Philadelphia, Pa., for the Company.

*Mr. Albert Weisbord*, of Philadelphia, Pa., for the AFL.

*Holmes, Lewis, and Menendez*, by *Mr. W. T. Lewis*, of Columbus, Ohio, and *Messrs. Joseph Froesch, Brook Bowles, Elwood Tryon*, and *Ralph J. Reiser*, of Columbus, Ohio, for the CIO.

*Miss Frances Lopinsky*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local #541, A. F. of L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Rohm & Haas Company, Bristol, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Trenton, New Jersey, on December 8, 1944. The Company, the AFL, and Federation of Glass, Ceramic, and Silica Sand Workers, C. I. O., herein called the CIO, 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 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

Rohm & Haas Company, a Delaware corporation, is engaged at its plant at Bristol, Pennsylvania, in the manufacture, sale, and distribution of glass, ceramic, and silica sand products.  
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tion of chemicals, chemical specialties, and plastics. During the year 1943, the Company purchased in excess of \$750,000 worth of raw materials consisting mainly of chemicals, approximately 75 percent of which was shipped from States other than Pennsylvania to the Bristol, Pennsylvania, plant. During the same year, the Company produced chemicals, chemical specialties, and plastics of a value in excess of \$750,000, of which amount approximately 75 percent was shipped from the Bristol plant to States other than Pennsylvania. During the year 1944, the relations, proportions, and figures remained approximately the same as above.

For the purposes of this proceeding, 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, Local #541, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Federation of Glass, Ceramic, and Silica Sand Workers; affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to any labor organization as the exclusive bargaining representative of its plant guards until one has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO and the AFL each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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 AFL requests a unit composed of all plant guards employed by the Company, including lieutenants, but excluding supervisory employees. The Company agrees that the requested unit is appropriate

<sup>1</sup> The Field Examiner reported that the AFL submitted 18 application for membership cards, 16 of which bore signatures of persons appearing on the plant-protection pay roll of the Company for the period ending November 28, 1944; that the cards were dated 1 in October and 15 in November 1944.

The CIO submitted 13 membership application cards, all of which bore signatures of persons listed on the said pay roll. The cards were dated 9 in May, 1 in June, and 2 in November 1944, 1 being undated. There are 24 employees in the unit herein found appropriate.

but it would exclude therefrom lieutenants, who, it contends, are supervisory employees. The CIO argues that the appropriate unit should consist of all of the employees within what is known as the Company's safety department, which includes 20 plant guards, 4 fire marshals, and 2 safety men, excluding lieutenants and other supervisory employees.

The guards employed by the Company are armed and uniformed and are members of the auxiliary military police. The fire marshals and the safety men are neither armed, uniformed, nor militarized. The militarized guards have sworn to the Articles of War and have received a special 20 weeks' training course in guarding, policing, and anti-sabotage, as well as legal phases of making arrests. Their duties are to protect the plant property and buildings from sabotage and damage. They operate an ADT system, which consists of time clocks throughout the plant which must be punched at regular intervals, examine all packages and vehicles leaving and entering the plant, and check on the passes of both employees and visitors.

Two elections for the determination of representatives for collective bargaining have been held in the Company's plant. One<sup>2</sup> resulted in the selection of the AFL by maintenance employees in the plant. The other<sup>3</sup> resulted in the selection of no union by production employees. The safety department employees were excluded from the units of maintenance and production employees, respectively, set up in the aforementioned proceedings.

As noted above, the CIO requests that all the employees in the safety department, both militarized and non-militarized, be grouped in a single unit. This grouping is one which, judged by our customary criteria of functional similarity and common supervision, would be deemed appropriate under ordinary circumstances. It does not, however, conform to the policy of segregating militarized plant-protection employees which we have adopted, in cooperation with the military authorities, in order to accommodate the collective bargaining rights of such employees to their wartime responsibilities.<sup>4</sup> Neither those rights nor those responsibilities can be ignored. During this war period, militarized plant-protection employees, to an even greater extent than other employees engaged in war production, have surrendered their traditional economic weapons, and submitted to novel restraints upon their freedom to act in furtherance of their interests as wage earners. Consequently, their exercise of the right to self-organization and collective bargaining, guaranteed by the Act to all

<sup>2</sup> *Matter of Rohm & Haas Company*, 51 N. L. R. B. 1232, wherein an election was directed among maintenance employees in the plant.

<sup>3</sup> *Matter of Rohm & Haas Company*, 4-R-1462, stipulated case.

<sup>4</sup> See *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881; *Matter of Dravo Corporation*, 52 N. L. R. B. 322, *Matter of Budd Wheel Co.*, 52 N. L. R. B. 666, War Department Circular Number 15, dated 7 March 1943.

employees as a means of eliminating and preventing obstructions to commerce, assumes particular importance to the national welfare, for the collective bargaining process is the only orderly and peaceful way in which such employees can adjust their employment problems. To close that way would be to create an intolerable threat to war production. We, therefore, hold that bargaining units of militarized plant-protection employees are appropriate to effectuate the policies of the Act, and to serve, particularly, the nation's special wartime interest in uninterrupted production. It is manifest, however, that the direct and paramount obligations to the Government assumed by militarized guards are reflected in their terms and conditions of employment, and generally necessitate special, separate negotiations between their representatives and the employer.<sup>5</sup> For this reason, and in order to facilitate the exercise of effective control by the military authorities, we have uniformly placed militarized plant-protection employees in separate bargaining units, even where other considerations supported their inclusion in departmental or broader units with non-militarized employees.<sup>6</sup>

In accordance with the foregoing, we shall direct an election among the Company's plant-protection employees but shall exclude the fire marshals and safety inspectors from the appropriate unit because they are not militarized plant-protection employees. We shall also exclude lieutenants from the appropriate unit. Each lieutenant is responsible for a shift, and except on the first of the three shifts, a lieutenant is in sole and complete charge of plant protection. Lieutenants have the right to make effective recommendations regarding the transfer of guards who work under them. They may discipline guards to the extent of sending one home if he appears unfit for duty. Consequently, we are of the opinion that lieutenants are supervisory employees.

We find that all militarized guards employed by the Company at its Bristol, Pennsylvania, plant, excluding fire marshals and safety inspectors, lieutenants, the captain of the guard, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recom-

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<sup>5</sup> A standard provision in contracts covering such employees, on file in the Industrial Relations Division, Bureau of Labor Statistics, Department of Labor, Washington, D. C., states that nothing therein should be construed to abrogate or interfere with the War Department's control over such employees or their duties and responsibilities as auxiliary military policemen. Provision is made for "no-strike pledge," irrespective of the action of other employees, and some contracts specifically provide for impartial treatment of employees by guards without regard to union or non-union affiliation of said employees.

<sup>6</sup> See *Matter of U. S. Electric Motors, Inc.*, 45 N. L. R. B. 298; *Matter of Julius Petersen*, 46 N. L. R. B. 1049; *Matter of Lord Manufacturing Company*, 47 N. L. R. B. 1032, and cases cited in footnote 4, *supra*. Although we have required that militarized and unmilitarized employees be represented in separate units, we have protected the statutory right of militarized employees to be represented by any organization they may choose, including the organization which represents non-militarized employees of the same employer. See *Matter of Dravo Corporation*, War Department Circular No. 15, *supra*.

mend 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 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.

The CIO requests that it be designated on the ballot as C. I. O. Since the designation requested is insufficient properly to identify the labor organization in question, the request is hereby denied.

#### 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 Rohm & Haas Company, Bristol, Pennsylvania, 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 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 International Union of Operating Engineers, Local #541, A. F. of L., or by Federation of Glass, Ceramic, and Silica Sand Workers, C. I. O., for the purposes of collective bargaining, or by neither.