

IN the Matter of HAROLD D. FARBER, WILLIAM DEAN, BERNARD KING, THOMAS PATTERSON, AND SIMON FARBER, CO-PARTNERS, D/B/A THE VICTORY CHEMICAL COMPANY *and* INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 253, A. F. L.

IN the Matter of HAROLD D. FARBER, WILLIAM DEAN, BERNARD KING, THOMAS PATTERSON, AND SIMON FARBER, CO-PARTNERS, D/B/A THE VICTORY CHEMICAL COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 907, A. F. L.

IN the Matter of HAROLD D. FARBER, WILLIAM DEAN, BERNARD KING, THOMAS PATTERSON, AND SIMON FARBER, CO-PARTNERS, D/B/A THE VICTORY CHEMICAL COMPANY *and* UNITED GAS, COKE AND CHEMICAL WORKERS, C. I. O., INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 253, A. F. L., AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 907, A. F. L.

Cases Nos. 3-R-914, 3-R-930, and 3-RE-13, respectively.—Decided February 28, 1945

Mr. Sidney B. Pfeifer, of Buffalo, N. Y., for the Company.

Mr. Charles R. Miller, of Buffalo, N. Y., for the Firemen and Oilers.

Mr. Wilmer Danat, of Buffalo, N. Y., for the Operating Engineers.

Messrs. John Boyd and Charles McCullough, of Niagara Falls, N. Y., for the CIO.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by International Brotherhood of Firemen and Oilers, Local 253, A. F. L., herein called the Firemen and Oilers, International Union of Operating Engineers, Local 907, A. F. L., herein called the Operating Engineers, and Harold D. Farber, William Dean, Bernard King, Thomas Patterson, and Simon Farber, co-partners, doing business as The Victory Chemical Company,¹ Buffalo, New York, herein called the Company, each alleging that a

¹ Name corrected to conform to the evidence.

question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Buffalo, New York, on January 15 and 24, 1945. The Company, the Firemen and Oilers, the Operating Engineers, and United Gas, Coke and Chemical Workers, C. I. O., herein called the CIO, appeared and participated.² 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

The Victory Chemical Company, a partnership, is engaged in the manufacture of chemical compounds for naval warfare at its two plants in Buffalo, New York—one located on Elk Street, herein referred to as the Elk plant, and the other on Leslie Street, herein referred to as the Leslie plant. During 1944, the Company purchased for use at its plants raw materials valued in excess of \$250,000, of which more than 75 percent was shipped from points outside the State of New York. During the same period, products finished at these plants were valued in excess of \$500,000, of which more than 75 percent was 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

International Brotherhood of Firemen and Oilers, Local 253, and International Union of Operating Engineers, Local 907, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

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

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to any union as the exclusive bargaining representative of certain of its employees until

² Although duly served with Notice of Hearing, Associated Welders of Western New York, Inc., did not appear.

such union has been certified by the Board in an appropriate unit. The CIO, asserting that, as a result of a card check, it has been recently designated by a United States Commissioner of Conciliation as the representative of the production and maintenance employees at the Company's two plants, contends that this proceeding is thereby barred.

On September 15, 1944, the CIO and the Company signed a written memorandum, wherein they stipulated to negotiate a contract after the CIO "had had a card check certified by a responsible government agency." On September 29, 1944, at the request of these parties, a United States Conciliation Commissioner at Buffalo checked the authorization cards submitted by the CIO against a pay roll supplied by the Company, and reported that of 113 cards submitted, 92 were "satisfactory," 20 were "thrown out due to quits," and 1 card was "blank."³ Manifestly, this card check does not establish that the CIO was selected by a majority of the Company's employees in an appropriate and clearly delineated unit.⁴ We are not persuaded that a present determination of representatives is precluded.⁵

A statement of a Board Field Examiner, introduced into evidence at the hearing, and a statement of the Trial Examiner made on the record at the hearing, indicate that each of the labor organizations involved herein represents a substantial number of employees in the unit it claims to be appropriate.⁶

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.

IV. THE APPROPRIATE UNITS

The Firemen and Oilers seeks a unit of all production and maintenance employees at the Company's Leslie plant, including laboratory

³ This is the sum and substance of the Conciliation Commissioner's report upon which the CIO relies to establish its alleged designation as the bargaining representative of the employees at the Company's two plants.

⁴ At the time of their contract negotiations following the card check, it appears that the CIO and the Company were in dispute with respect to the inclusion of engineers in the bargaining unit, the CIO claiming that they were included, and the Company insisting that they were not.

It further appears that no notice of the card-check proceeding was given to the Operating Engineers, although the CIO, and apparently the Company, were aware that, prior thereto, the Operating Engineers was actively engaged in organizing engineers at the Leslie plant.

⁵ The CIO's request that the Board certify it on the basis of the Conciliation Commissioner's card check is, accordingly, denied.

⁶ The Field Examiner reported that the Firemen and Oilers submitted 17 authorization cards bearing the names of persons listed on the Company's pay roll of December 2, 1944, which contained the names of 30 employees in the unit the Firemen and Oilers alleges to be appropriate.

The Trial Examiner stated on the record that the Operating Engineers submitted three authorization cards bearing the names of persons listed on the Company's pay roll of December 2, 1944, which contained the names of three employees in the unit the Operating Engineers alleges to be appropriate.

The Trial Examiner also stated on the record that the CIO submitted 51 authorization cards bearing the names of persons listed on the Company's pay roll of December 2, 1944, which contained the names of 103 employees in the unit the CIO alleges to be appropriate.

technicians,⁷ but excluding engineers, and official clerical and supervisory employees. The Operating Engineers requests a unit of engineers at the Company's Leslie plant.⁸ The CIO opposes the formation of the units sought by the Firemen and Oilers and the Operating Engineers, and urges that only a single, two-plant unit comprising all non-supervisory production and maintenance employees is appropriate. The Company assumes a neutral position. All parties appear to agree to the inclusion of working foremen,⁹ and plant and stock clerks.¹⁰

As noted above, the Company is engaged in the manufacture of chemical compounds for naval warfare. For such purposes, it operates its Leslie and Elk plants, which are approximately 2 miles apart from each other. At the Leslie plant, the initial manufacturing processes are performed involving the mixing of various chemical compounds and fashioning them into small briquettes. The final process, known as chlorination, is performed at the Elk plant. Each plant is under the supervision of a plant superintendent. The Leslie plant superintendent is directly accountable to the Company's partners, while the Elk plant superintendent is responsible to the chief and assistant chief of production. The plants have different pay days and separate pay rolls, and maintain different work shifts. The little interchange of personnel between the plants that occurs is confined to general labor,¹¹ and the majority of employees working in one plant would not necessarily gain experience which would qualify them to work in the other plant.¹²

The Company employs at the Leslie plant three licensed engineers who are engaged in the usual functions of their craft. They are charged with the duty of furnishing necessary steam pressure for the drying ovens and maintaining the boilers they operate. Engineers generally receive a higher rate of pay among the production and maintenance employees, and are under the direct supervision of the Leslie plant superintendent.

Considering the geographical distance between the plants, their dissimilar working conditions, their separate supervision, the fact that engineers comprise a skilled, homogeneous, and well-defined group,

⁷ Laboratory technicians are employed only at the Leslie plant. They are non-professional employees, generally perform routine analyses, and are among the lowest hourly paid employees.

⁸ There are no engineers employed at the Elk plant.

⁹ Working foremen perform manual labor along with other men of the squad which they lead and do not possess the status of supervisory employees as defined by the Board.

¹⁰ Plant and stock clerks perform the customary functions of shipping and receiving clerks.

¹¹ Interchange of maintenance employees between the two plants occurs only in case of emergency.

¹² The record discloses that the Firemen and Oilers has limited its organizing efforts to employees at the Leslie plant.

and the absence of a history of collective bargaining, we are of the opinion that three separate units should be established.

Accordingly, we find that the following units are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

1. All production and maintenance employees at the Company's Leslie plant, including laboratory technicians, working foremen, and plant and stock clerks, but excluding engineers, office clerical employees, the plant superintendent, the assistant plant superintendent, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or affectively recommend such action;

2. All engineers at the Company's Leslie plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action; and

3. All production and maintenance employees at the Company's Elk plant, including working foremen, plant and stock clerks, and welders, but excluding the plant superintendent, shift superintendents, 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.

Our findings, however, are without prejudice to a later application for appropriate consolidation depending upon the results of the elections hereinafter directed, inasmuch as either a unit of production and maintenance employees at both plants, including or excluding engineers at the Leslie plant, or a unit of production and maintenance employees at the Leslie plant, including engineers there employed, is feasible for collective bargaining purposes.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units 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.

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 Harold D. Farber,

William Dean, Bernard King, Thomas Patterson, and Simón Farber, co-partners, doing business as The Victory Chemical Company, Buffalo, New York, 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 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 units described below, 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 elections.

1. All production and maintenance employees at the Company's Leslie plant, including laboratory technicians, working foremen, and plant and stock clerks, but excluding engineers, office clerical employees, the plant superintendent, the assistant plant superintendent, 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, to determine whether they desire to be represented by International Brotherhood of Firemen and Oilers, Local 253, A. F. L., or by United Gas, Coke and Chemical Workers, C. I. O., for the purposes of collective bargaining, or by neither;

2. All engineers at the Company's Leslie plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by International Union of Operating Engineers, Local 907, A. F. L., or by United Gas, Coke and Chemical Workers, C. I. O., for the purposes of collective bargaining, or by neither; and

3. All production and maintenance employees at the Company's Elk plant, including working foremen, plant and stock clerks, and welders, but excluding the plant superintendent, shift superintendents, 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, to determine whether or not they desire to be represented by United Gas, Coke and Chemical Workers, C. I. O., for the purposes of collective bargaining.

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