

In the Matter of NATIONAL CARBON COMPANY, INC., NIAGARA WORKS and LOCAL #85, UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, C. I. O.

Case No. 3-R-918.—Decided April 9, 1945

Mr. Eugene J. von Wollsheim, for the Board.

Mr. William C. Treanor, of New York City, for the Company.

Mr. Charles A. Doyle, of Niagara Falls, N. Y., for the Union.

Mr. Louis Monas, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Local #85, United Gas, Coke & Chemical Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of National Carbon Company, Inc., Niagara Works, Niagara Falls, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Niagara Falls, New York, on February 21 and 22, 1944. The Board, the Company and the Union appeared and participated, were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Trial Examiner reserved ruling on the Company's motion to dismiss the petition. For reasons set forth in Section III, *infra*, this motion is 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 the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

National Carbon Company, Inc., a New York corporation and a subsidiary of the Union Carbide and Carbon Corporation, is engaged

at Niagara Falls, New York, in the manufacture of carbon and graphite products. During 1944 the Company used at its Niagara Works raw materials valued in excess of \$500,000, more than 90 percent of which came from sources outside the State of New York. During the same period it manufactured finished products valued in excess of \$500,000, more than 75 percent of which was shipped to points outside that State.

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

II. THE ORGANIZATION INVOLVED

Local #85, United Gas, Coke & Chemical Workers of America, 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 the Union as the exclusive bargaining representative of certain of its employees until the Union 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 the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 parties are in general agreement that the appropriate unit² should consist of all hourly paid employees of the Company's Acheson,

¹ The Field Examiner reported that the Union submitted 310 application cards in an alleged appropriate unit of 782 employees, and that a spot check of 20 percent of these cards against the Company's pay roll of December 17, 1944, indicated that the Union made a showing of 30 percent

The Company moves to dismiss the petition on the ground that the spot check discloses that the Union's showing is allegedly less than the number of votes it polled in a prior election held on April 17, 1944 (*Matter of National Carbon Company, Inc., Niagara Works*, 55 N. L. R. B. 785), in which a bargaining representative was not selected. Approximately 1 year has elapsed since the prior election, the Union has presented evidence of a substantial interest among the employees in the unit petitioned for, and all cards (excepting 33 which are undated) are dated subsequent to the last election. We believe that the policies of the Act will best be effectuated under these circumstances by conducting an election on the present petition. See *Matter of Vermont Copper Company, Inc.*, 59 N. L. R. B. 853.

² In *Matter of National Carbon Company, Inc., Niagara Works* (see footnote 1, *supra*), the Board found that the appropriate unit consisted of "all employees on the hourly pay roll of the Company at its Niagara Works at its three plants, namely, National, Acheson, and Republic, including checkers, store clerks, and watchmen, but excluding guards, clerical and office employees (except the checkers and store clerks), salaried employees, bricklayers, and all supervisory employees . . ."

There has been no material change in either the Company's operations or the number of its employees since the Board's previous decision

National, and Republic plants at Niagara Falls, New York, commonly known as the Niagara Works, including gang or group leaders,³ and watchmen, but excluding clerical (including intra-plant messengers), and office employees, salaried employees, bricklayers,⁴ guards, the head shipping clerk, supervisors, and all other supervisory employees. They are in dispute concerning the employees discussed below.

The Union would exclude as supervisory employees, four inspectors departmental, two head cooks, two head floormen, and the Acheson plant carpenter and millwright. Except for John Henner, one of the inspectors departmental, it appears from the evidence that none of these employees has any supervisory authority. Henner, however, has obtained increases for some employees, recommended the demotion of one employee, and job transfers of others. We shall include all of these employees except John Henner, whom we shall exclude.

The Union would exclude as clerical employees, the checkers and stores clerks, as well as Ernest F. Crawford, one of the works laboratory assistants at the Acheson plant. Except for Crawford, the evidence clearly indicates that these employees are engaged in physical labor, performing functions which are essentially a part of the production and maintenance process; whatever clerical work is done by them is merely incidental to their principal duties. Crawford, on the other hand, appears to do no physical labor. Although classified as a laboratory assistant and assigned to the works laboratory, he is primarily responsible for the proper technical operation of the furnaces, performing this function while at his desk. He prepares reports relating to the operation of the furnaces and, among his other clerical duties, spends some time in work concerning the O. P. A. Approximately 60 percent of his work day is spent in the works laboratory office. We are of the opinion that Ernest F. Crawford is purely a clerical employee and we shall exclude him. However, we shall include the checkers and stores clerks.

The Union would exclude as technical or research employees, approximately 10 laboratory assistants in the development laboratory.⁵ This department is under the supervision of a professionally trained technician, assisted by 3 or 4 technicians who supervise the work of these laboratory assistants. This laboratory experiments with and develops the results of the basic research conducted by the Company's research department at Cleveland, Ohio. The laboratory assistants are not professionally trained, some of them not having completed high school, nor does the Company require of them any kind of special skill or training. Some of them were previously employed in actual

³ It appears that these employees are not supervisory.

⁴ These employees are represented by another union which has a contract with the Company.

⁵ These employees are eligible for union membership. They voted in the prior election

plant production, a few started as bricklayers' assistants, and 5 are presently engaged in the production of a regular commercial product of the Company. They may be shifted between laboratory work and production work. Their wage rate and working conditions are comparable to that of the production and maintenance employees. They are not research or technical workers, but their functions are a necessary part of the production and maintenance process. We shall include them.

We find that all hourly paid employees of the Company's Acheson, National, and Republic plants at Niagara Falls, New York, known as the Niagara Works, including checkers and stores clerks, the Acheson plant carpenter and millwright, watchmen, gang or group leaders, the head floormen, the head cooks, the inspectors departmental,⁶ and the development laboratory assistants, but excluding clerical (including intra-plant messengers and Ernest F. Crawford) and office employees, salaried employees, bricklayers, guards, the head shipping clerk, supervisors, 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.

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 payroll 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 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 National Carbon Company, Inc., Niagara Works, Niagara Falls, New York, 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 Third Region, acting in this matter as agent for the National Labor Relations Board,

⁶ John Henner is excluded as a supervisory employee.

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 or not they desire to be represented by Local #85, United Gas, Coke & Chemical Workers of America, C. I. O., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.