

In the Matter of E. I. DU PONT DE NEMOURS AND COMPANY and THE
BUFFALO DU PONT WORKERS' INDEPENDENT UNION, AFFILIATED WITH
CONFEDERATED UNIONS OF AMERICA

Case No. 3-R-999.—Decided October 3, 1945

Mr. H. O. Blumenthal, of Wilmington, Del., for the Company.

Mr. James Kozma, of Rome, N. Y., and *Mr. William Dietrich*, of
Kenmore, N. Y., for the petitioner.

Mr. Clarence J. Hiam, of Tonawanda, N. Y., for the intervenor.

Mr. Mozart G. Ratner, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by The Buffalo du Pont Workers' Independent Union, affiliated with Confederated Unions of America, herein called the petitioner, alleging that a question affecting commerce had arisen concerning the representation of employees of E. I. du Pont de Nemours and Company, Tonawanda, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. The hearing was held at Buffalo, New York, on June 29, 1945. The Company, the petitioner, and Buffalo du Pont Salaried Workers Union, herein called the intervenor, 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

The Company, a Delaware corporation, operates a plant at Tonawanda, New York, alone involved in this proceeding, where it is
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engaged in the manufacture of staple fiber and cordura. The fiber is utilized in the cotton spinning process; cordura is used in the manufacture of fuel cells, automobile tire materials, and similar products. During the fiscal year beginning June 1, 1944, the Company utilized raw materials valued in excess of \$1,000,000, of which more than 74 percent was shipped to the Tonawanda plant from points outside the State of New York. During the same period the Company's finished products were valued in excess of \$5,000,000, more than 98 percent of which was shipped to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

The Buffalo du Pont Workers' Independent Union, affiliated with Confederated Unions of America, is a labor organization admitting to membership employees of the Company.

Buffalo du Pont Salaried Workers Union, although not having completed its formal organization, was represented at the hearing by its temporary president who testified that it was an independent organization formed for the purpose of engaging in collective bargaining on behalf of certain employees of the Company. We find that Buffalo du Pont Salaried Workers Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the petitioner as the exclusive bargaining representative of the employees named in the petition until the petitioner 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 petitioner 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.

¹ The Field Examiner reported that the petitioner submitted 147 authorization cards, all of which bore apparently genuine original signatures, that the names of 139 persons appearing on the cards were listed on the Company's pay roll of May 1, 1945, which contained the names of 214 employees in the appropriate unit; that many of the cards were dated between 1938 and 1944, and that the remainder were dated in March, April, and May of 1945.

The intervenor submitted 31 authorization cards, all of which bore apparently genuine original signatures. The names of all persons appearing on the cards were contained in the aforesaid pay roll. All cards were dated in May and June 1945, except for 12 which were undated.

IV. THE APPROPRIATE UNIT

The petitioner seeks a unit composed of office, clerical, and technical employees, including both hourly paid and salaried workers in these classifications. The intervenor seeks a unit containing only the salaried employees in these classifications. The Company concurs with the petitioner that both salaried and hourly paid employees should be included in the unit.

Prior to June 10, 1944, the petitioner represented all employees of the Company, production and maintenance, as well as office, clerical, and technical employees, in a single unit. On July 10, 1944, following a consent election, the petitioner was designated as the exclusive bargaining representative of a unit composed of all production and maintenance employees. Thereafter, the petitioner continued to act as bargaining representative for its members among the office, clerical, and technical employees.

The evidence shows that employees on the salaried pay roll and employees on the hourly pay roll both work in the office, clerical, and technical classifications sought by the petitioner. It was testified that the "take home pay" of both groups is comparable, that they work side by side, that there is frequent interchange of employees between the salaried and hourly pay rolls, that hourly employees are often employed in the office and that salaried employees are often employed outside of the office, that the same disability wage plans and insurance plans cover both types of employees, and that the classification of employees as to manner of payment is in large part fortuitous. It further appears that the only differences between employees on the hourly pay roll and those on salary are that salaried employees are entitled to vacation if they appear on the pay roll as of January 1, whereas hourly employees are entitled to vacation only after 1 year's service with the Company; that hourly workers are not paid for the time they are absent, whereas salaried workers do not sustain a loss as a result of short absences; that the compensation of salaried employees is deemed confidential by the Company, whereas the pay rates of hourly workers is not deemed confidential; and that during the absence of a salaried employee his work accumulates while this does not generally occur in the case of hourly workers. We find that the community of interest between all employees in the office, clerical, and technical classifications outweighs the dissimilarities which stem from differences in manner of payment and hold that both hourly paid and salaried workers are appropriately included in a single bargaining unit.

We find, in substantial accord with the position taken by the petitioner and the Company, that all employees of the Company's rayon department at Tonawanda, New York, including all employees of the rayon and technical divisions, but excluding the goggleman, all hourly

roll employees of the rayon division in the production and maintenance unit established in Case No. 3-R-764, guards, cleaners, all employees of the cellophane and cell-o-seal divisions, confidential employees, leadermen, 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.²

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 E. I. du Pont de Nemours and Company, Tonawanda, 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, 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 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 The Buffalo du Pont Workers' Independent Union, affiliated with Confederated Unions of America, or by Buffalo du Pont Salaried Workers Union, for the purposes of collective bargaining, or by neither.

² In view of our rejection of the intervenor's contention concerning the composition of the unit, we shall permit the intervenor to withdraw from participation in the election if it so desires by notifying the Regional Director for the Third Region within ten (10) days from the issuance of this Direction of Election.