

IN THE MATTER OF E. I. DU PONT DE NEMOURS AND COMPANY *and* LEAD
BURNERS LOCAL 677, UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS
AND STEAMFITTERS OF UNITED STATES AND CANADA, AFFILIATED WITH
THE A. F. OF L.

Case No. 3-R-1079.—Decided March 11, 1946

Mr. H. O. Blumenthal, of Wilmington, Del., and *Mr. W. O. Simon*,
of Buffalo, N. Y., for the Company.

Messrs. Daniel B. Shortal, *James Stillwell*, and *Clarence Resen-
berger*, of Buffalo, N. Y.; and *Mr. John Regan*, of White Plains,
N. Y., for the A. F. of L.

Mr. John F. Gunderman, of Buffalo, N. Y., and *Mr. Ward Jones*,
of Snyder, N. Y., for the Independent.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Lead Burners Local 677, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, affiliated with the A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of E. I du Pont de Nemours and Company, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgeson, Trial Examiner. The hearing was held at Buffalo, New York, on November 7, 8, and 19, 1945. The Company, the A. F. of L., and Buffalo du Pont Workers Independent Union, herein called the Independent, appeared and participated.¹ 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.

¹ Textile Workers Union of America, a labor organization affiliated with the Congress of Industrial Organizations, herein called the C. I. O., also served with notice, did not appear at the hearing

All parties were afforded 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

E. I du Pont de Nemours and Company, a Delaware corporation, is engaged in the manufacture of chemical products. Its plant at Buffalo, New York, is the only plant involved in this proceeding.

During 1944, the Company used at its Buffalo plant raw materials valued in excess of \$1,000,000, of which 75 percent represents shipments to the plant from points outside the State of New York. During the same period, the Company manufactured at its Buffalo plant products exceeding \$1,000,000 in value, of which approximately 75 percent represents shipments 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

Lead Burners Local 677, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

Prior to filing the petition for investigation and certification of representatives herein on August 27, 1945, the A. F. of L. submitted no request to the Company for recognition as bargaining representative of employees of the Rayon Division. At the hearing, however, the Company took the position that it would not recognize the A. F. of L., absent certification by the Board.

On October 11, 1944, the Company and the Independent entered into a contract covering production and maintenance employees of the Rayon Division at the Buffalo plant. The contract provided that it be in effect for 1 year, and thereafter for an additional period of 1 year, unless 30 days' notice were given in writing prior to the annual terminal date. Prior to the automatic renewal date, the A. F. of L. filed the petition in this proceeding. Neither the Company nor the

Independent contends that the contract is a bar to this proceeding. Since the filing of the petition constitutes timely notice of the claim of the A. F. of L. to represent employees covered by the contract, we find that the contract constitutes no bar to a determination of representatives at this time.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the craft unit alleged to be appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The A. F. of L. contends that lead burners and lead burners' helpers in the Rayon Division of the Company's plant at Buffalo, New York, constitute a separate appropriate bargaining unit. The Company and the Independent contend that the proposed craft unit is not appropriate, on the grounds (1) that all skilled and unskilled production and maintenance employees in the Rayon Division work together to the common end that production processes may be carried on without interruption and are therefore bound by a common interest that require their inclusion in a single unit for bargaining purposes; and (2) that the history of bargaining at the Buffalo plant over a period of years and bargaining on a similar basis at other plants of the Company demonstrate that the broad unit is the only appropriate unit for the Company's employees in the Rayon Division and preclude separate bargaining on a craft basis at this time.

At its Buffalo, New York, plant, the Company conducts within a fenced enclosure three separate manufacturing operations, called the Rayon Division, the Cellophane Division, and the Cel-O-Seal Division, respectively, each of which constitutes an integrated enterprise, independent of the other two and directly subject to the central authority of the Company at Wilmington, Delaware. As a matter of operating convenience, however, all the Company's properties in the Buffalo area are serviced by maintenance employees listed on the Rayon Division pay roll, with headquarters in the Division, working under their respective craft foremen. This wider extension of their working activities has not substantially altered their status as em-

² The Field Examiner reported that in support of its claim to represent lead burners at the Company's plant the A. F. of L. submitted 12 applications for membership and dues books.

The Independent relies on its contract covering employees at the plant to show its interest among them.

There are approximately 19 employees in the proposed craft unit.

ployees of the Rayon Division or their participation in benefits accruing to employees in this division of the Buffalo plant. Employees of the Rayon Division, including these maintenance employees, among whom are the lead burners covered by the petition, are immediately concerned in this proceeding.

Under the superintendent of the Company's Rayon Division are approximately 1,000 production and maintenance employees. Under the works manager is a maintenance supervisor in general charge of the maintenance of the Buffalo plant properties, to whom reports the crafts' supervisor responsible for the work to be performed by pipe fitters, lead burners, carpenters, millwrights, machinists, welders, and other artisans and their helpers. Under the crafts' supervisor are the various subordinate craft foremen, among whom is the lead burners' foreman in charge of lead burners, who were 12 in number at the time of the hearing. One lead burner is specifically assigned to work in a department where his continued service is needed. Other lead burners separately receive from their foremen daily work assignments to the machine shop or to any other section or department of the plant where lead work is required and where they may be subject to dual supervision. While the nature of their employment brings them into more or less close contact with other craftsmen working under other craft foremen and with machine operators and other production employees working under department supervisors within the confines of the several divisions of the plant, the peculiar skills of lead burners distinguish them as craftsmen apart from other trained workers. No other employees of the Company perform lead work. Thus, despite the fact that lead burners share general plant conditions with other production and maintenance workers, due to their common employment with the Company, we find that lead burners of the Rayon Division working in the Buffalo area perform work common to their craft, that they constitute a clearly identifiable and homogeneous group of employees, and that, absent other considerations, they may properly constitute a separate bargaining group.³

With respect to the bargaining history of the Rayon Division of the Buffalo plant, which the Company and the Independent urge as a bar to the proposed bargaining unit based along craft lines, the record reveals the following:

In 1937 employees of the Rayon Division organized the Independent, and a majority of these employees, among whom were lead burners, became members of the Independent. Between 1937 and 1944, the Company and the Independent held informal bargaining conferences resulting in oral agreements and written memoranda,

³ *Matter of National Lead Company, Titanium Division*, 63 N. L. R. B. 903.

raising wages and defining working policies affecting the conditions of employment in the Rayon Division.

In the fall of 1943, some lead burners in the Rayon Division, while retaining their membership in the Independent, signed applications for craft membership in the American Federation of Labor. On February 25, 1944, Textile Workers Union of America, a labor organization affiliated with the Congress of Industrial Organizations, herein called the C. I. O., filed a petition for investigation and certification of representatives of production and maintenance employees in the Rayon Division. In March 1944 lead burners in the Rayon Division abandoned their memberships in the Independent, and began to build up their craft group. On April 25, 1944, pursuant to an agreement among the Company, the Independent, and the C. I. O., the Regional Director conducted a consent election among production and maintenance employees in the Rayon Division to determine whether they desired to be represented by the Independent, or by the C. I. O., or by neither, for the purposes of collective bargaining.⁴ On May 10, 1944, while an investigation concerning the conduct of the election was pending, all lead burners in the Rayon Division, by direct petition to their employer, sought a wage increase for themselves as craftsmen, meeting with representatives of management for this purpose. Their request was denied on the basis of governmental regulations of wages. On June 10, 1944, the Regional Director, resolving favorably certain issues respecting the validity of the election, formally announced that the Independent had won the election. On July 15, 1944, United Association of Journeymen Plumbers and Steamfitters of United States and Canada granted the Company's lead burners a charter, and they constituted themselves a local craft union, the petitioner herein. On October 11, 1944, the Independent and the Company entered into a contract, wherein the Company recognized the Independent as the exclusive bargaining representative of all hourly paid employees in the Rayon Division, among whom are the lead burners. Since entering into the contract with the Independent, the Company has dealt exclusively with representatives of the Independent respecting conditions of employment in the Rayon Division. Numerous conferences between the parties and oral agreements subsequently amplified the original contract of October 1944, and the contract, as amended and interpreted, resulted in the improvement of employment conditions in the Rayon Division, which benefited all employees, including the lead burners. The contract did not require membership in the Independent as a condition of employment. The Company's lead burners maintained their craft

⁴ Although representatives of the Independent knew that lead burners had withdrawn from the Independent, the affiliation of lead burners with the American Federation of Labor was not known to the Company or to other employees of the Company.

union and, so far as the record discloses, as a group and as individuals took no part in bringing about the results achieved by the Independent. Since the Company refused to negotiate any grievances in the absence of a representative of the Independent, and the Independent offered its services in the settlement of grievances to non-members, a representative of the Independent functioned in occasional grievance negotiations for lead burners and their helpers.⁵

Since the hearing was held in the instant proceeding, the Board has found that lead burners in the Company's Grasselli, New Jersey, plant constitute an appropriate bargaining unit and has certified a labor organization affiliated with the petitioner herein as their exclusive bargaining representative.⁶ So far as the record discloses, employees of other plants of the Company are included in plant units for bargaining purposes. Employees at the two other manufacturing divisions in the Buffalo area bargain informally with their employer on division bases. We believe that the type of bargaining among employees at other plants of an employer suggests the kind of unit which experience has shown convenient and successful for bargaining purposes, but that the type of bargaining at other plants of their employer is not conclusive of the scope of the unit for employees of the Rayon Division at the Buffalo plant.

We find that lead burners of the Company's Rayon Division at Buffalo, New York, may properly constitute either a separate bargaining unit or part of the larger production and maintenance group at the Buffalo plant presently represented by the Independent. We will hold an election among the lead burners to determine whether they desire to be represented by the A. F. of L., or by the Independent, or by neither, and we shall make no determination of the unit issue until the results of the election shall have been disclosed.

Certain unskilled laborers, rated as Class D helpers by the Company, are regularly assigned to serve as helpers to lead burners and, by such custom acquiring some facility in the work, are commonly called lead burners' helpers.⁷ The parties agree that, if lead burners at the Rayon Division of the Buffalo plant constitute an appropriate bargaining unit apart from other employees of the Rayon Division, lead burners' helpers should be included in the same craft group.

⁵ There are some uncertainties with respect to the scope of the grievance machinery.

The contract purports to extend the grievance machinery only to union members, although membership in the Independent is not a condition of employment. In view of the exclusive recognition clause, the Company and the Independent have placed a more liberal interpretation upon the coverage of the contract than its several terms alone strictly require.

⁶ *Matter of E. I. du Pont (Grasselli Division)*, 65 N. L. R. B. 390. The Supplemental Decision and Certification of Representatives, issued on February 14, 1946, is unpublished.

⁷ Although upon occasion and in an emergency any laborer may be assigned to assist a lead burner, the term lead burners' helper is commonly restricted to designate only a laborer customarily assigned to the work as a matter of routine.

We shall include lead burners' helpers in the voting group. The parties further agree that the lead burners' foreman and those in the supervisory hierarchy above him should be excluded from the craft unit. Since these employees as indicated have authority to hire and discharge, and are thus supervisory employees within our definition of the term, we shall exclude them from the voting group of lead burners.⁸

Those eligible to vote in the election will be all lead burners and lead burners' helpers in the Rayon Division of the Company's Buffalo plant, excluding the lead burners' foreman 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, 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.

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, Buffalo, 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 lead burners and lead burners' helpers in the group described 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 those employees

⁸The A F of L would include the categories of lead burners' apprentices and work leaders within its proposed craft unit. At the time of the hearing, the Company employed no one in either of these categories. Apprentices are usually included in craft units. The record does not fully describe "work leaders." If, as a result of this proceeding, a craft unit is found appropriate for lead burners and a labor organization certified as bargaining representative of employees therein, and disagreement with respect to the unit placement of lead burners' apprentices and work leaders who may be hired arises, we will entertain a motion to clarify the scope of the unit for lead burners employed in the Rayon Division.

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 Lead Burners Local 677, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, affiliated with the A. F. of L., or by Buffalo du Pont Workers Independent Union, for the purposes of collective bargaining, or by neither.