

In the Matter of ETHYL CORPORATION and INTERNATIONAL CHEMICAL
WORKERS UNION, AFL

Case No. 15-R-1501.—Decided May 10, 1946

Messrs. M. E. Pettegrew and C. V. Porter, of North Baton Rouge, La., for the Company.

Messrs. Jack Hague and Frank Lantrip, of Baton Rouge, La., and Mr. E. R. Moffett, of Houston, Tex., for the Union.

Miss Helen Hart, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Chemical Workers Union, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ethyl Corporation, Baton Rouge, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Lewis Moore, Trial Examiner. The hearing was held at Baton Rouge, Louisiana, on February 18, 1946. The Company and the Union 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. At the hearing, the Company made two separate motions to dismiss the petition. The Trial Examiner referred these motions to the Board. For reasons set forth in Sections III and IV, *infra*, the motions are denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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

Ethyl Corporation, a Delaware corporation, is engaged in the manufacture of general chemical products at two plants located respectively at Baton Rouge, Louisiana, and Deep Water, New Jersey. The Baton

Rouge plant is the only one involved in this proceeding and it produces sodium, chlorine, and tetraethyl lead. During the 5-month period prior to the hearing, the Company purchased raw materials for the Baton Rouge plant valued in excess of \$2,000,000, of which about 80 percent was shipped to this plant from points outside the State of Louisiana. During the same period, the total production of this plant exceeded \$4,000,000, of which approximately 60 percent was transported to points outside the State of Louisiana.

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

II. THE ORGANIZATION INVOLVED

International Chemical Workers Union is a labor organization, affiliated with the American Federation of Labor, admitting supervisory employees of the Company to membership.¹

III. THE QUESTION CONCERNING REPRESENTATION

On October 11, 1945, the Union filed its amended petition in the instant proceeding without first requesting recognition from the Company as the exclusive bargaining agent of the employees it now seeks to represent.² However, the Company stated at the hearing that it would not recognize the Union as the representative of its supervisory employees; therefore, it is immaterial whether or not the question of representation actually arose prior to the hearing.³

The Company contends that the supervisory personnel, which the Union alleges constitutes an appropriate unit, are not "employees" within the meaning of the Act, but have "employer" or managerial status. On several previous occasions, the Board has found foremen and comparable supervisors to be "employees" within the Act's definition.⁴ The courts have concurred with the Board in this holding,⁵ and have agreed that foremen have a dual aspect under the definitions of "employer" and "employee" established in the Act. A foreman is

¹ The Union stated at the hearing that, if the Board directs an election and the Union is found to represent a majority of employees in the unit, it will charter an affiliated local authorized to represent foremen or supervisory employees only.

² The Company admitted in its brief that the Union, by a letter dated March 30, 1945, had sought recognition of E. I. du Pont de Nemours and Company, the corporation which had owned the sodium and tetraethyl lead divisions prior to September 15, 1945. The Company has assumed both du Pont contracts executed with District 50, United Mine Workers of America which represents the rank and file employees in the tetraethyl lead and sodium divisions, and, under a separate contract, the plant protection employees; it also assumed the contract of the Cooperative Bargaining Agency of Baton Rouge, which represents the rank and file employees in the ethyl chloride division.

³ See *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184.

⁴ *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348, and *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.

⁵ *N. L. R. B. v. Armour and Company*, 154 F. (2d) 570 (C. C. A. 10), November 5, 1945, and *N. L. R. B. v. Skinner and Kennedy Stationery Company*, 113 F. (2d) 667 (C. C. A. 8).

an "employer" when he acts in the interest of his employer, but he is an "employee" when he acts in his own interest, as when he seeks to improve the terms and conditions of his employment. Accordingly, the supervisors herein considered are employees within the meaning of Section 2 (3) of the Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.⁶

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 Union alleges that a unit of all foremen in the Manufacturing Department of the Company's Baton Rouge plant is appropriate. Specifically, it seeks to represent all foremen in the engineering and maintenance section, excluding the general foreman and the assistant general foremen; all shift, unit, and labor foremen in the operations section, excluding work leaders and operators; and the laundry foreman, patrol foreman, and shift patrol foremen in the industrial relations section. The Company takes no position regarding the inclusion or exclusion of any specific categories, but opposes, in toto, the establishment of any supervisory unit. The Company argues, in support of one of its motions to dismiss, that no bargaining unit is appropriate for foremen; in addition, it contends that the Union involved in this proceeding, in particular, cannot constitute a proper bargaining agent, because it is not independent of the bargaining agent which represents

⁶ The Field Examiner reported that the Union submitted 81 authorization cards bearing the names of 73 employees listed on the Company's pay roll of October 15, 1945, that the cards were dated March 1945; and that there were approximately 129 employees in the alleged appropriate unit.

The Company contends, in support of one of its motions to dismiss, that the cards submitted by the Union, which were dated March 1945, should not be used as a basis for determining whether a petitioner's showing is sufficient to warrant an election, inasmuch as the cards are out of date, and the signers were employees of du Pont rather than the Company at the time of signing. The Company further argues that the Union admitted at the hearing that only supervisors in the sodium and tetraethyl lead divisions of the Company (which were formerly owned by E. I. du Pont de Nemours and Company) had signed application cards, and that none of the cards bore the signatures of supervisors working in the ethyl chloride division of the Company. However, 73 of the employees who signed cards in March 1945, are listed on the Company's pay roll of October 1945, which was compiled subsequent to the purchase of the 2 divisions formerly owned by the du Pont corporation; therefore, these employees are now part of the Company's personnel. We cannot find merit in the claim that the cards do not show sufficient interest in the petitioning union merely because there has been a change in ownership of the employer since their execution. Furthermore, we have repeatedly held that the requirement of showing is merely an administrative expedient adopted to enable us to determine generally whether or not further steps in a representation proceeding are justified. This device is used by us to approximate, not to ascertain precisely, the petitioning union's representation. See *Matter of La Follette Shirt Company*, 65 N. L. R. B. 952, and *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560.

the subordinates of these foremen.⁷ The Company also implies that the foremen in its Baton Rouge plant have duties and responsibilities that place them in the position of "managerial" employees.

In a number of decisions,⁸ we have stated that the Act was intended to encourage collective bargaining as a means of settling labor disputes, whether such disputes involved foremen or other employees, and that our power extends only to "grouping" supervisory employees in appropriate units. Therefore, we find no merit in the Company's position that any unit of supervisors is inappropriate.

As to the Company's second contention, a majority of the Board recently on several occasions has refused to dismiss a petition for a supervisors' unit filed by an affiliate of the same labor organization which represented the same company's rank and file employees.⁹ A majority of the Board¹⁰ stated that the Board had no power under the Act to limit the choice by foremen of a collective bargaining agent to an independent, unaffiliated foremen's labor organization, because the Act guarantees to all employees, including supervisory employees, the right to bargain collectively "through representatives of their own choosing, not of our choosing".¹¹ By the same logic, we could not refuse to entertain the petition filed in the instant proceeding by an autonomous international, affiliated with the American Federation of Labor, merely because the union representing the Company's non-supervisory employees in certain of its divisions (District 50, U. M. W.) is also affiliated with the American Federation of Labor. We regard as salutary the expressed intention of the Union to establish a local, authorized by its charter to represent supervisory personnel exclusively, in the event that the Board finds a separate unit of these employees to be appropriate.

The employees whom the Union now seeks to represent are distributed throughout three of the nine major sections of the Company's Baton Rouge plant. These three sections which are part of the Manufacturing Department are: (1) engineering and maintenance; (2) operations; and (3) industrial relations. The remaining six sections of the Company are devoted to highly technical and/or clerical operations and there are no employees classified as foremen in those sections. The unit sought is basically one of production

⁷ As stated in fn. 2, *supra*, District 50, United Mine Workers of America, also affiliated with the A. F. L., represents the rank and file employees in the tetraethyl lead and sodium division

⁸ *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; and *Matter of Simmons Company*, 65 N. L. R. B. 984.

⁹ *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386, *Matter of California Packing Corporation*, 66 N. L. R. B. 1461, and *Matter of Virginia Electric and Power Company*, 66 N. L. R. B. 271.

¹⁰ Messrs Herzog and Houston

¹¹ *Matter of Jones & Laughlin Steel Corporation, supra*

and maintenance foremen. The shift patrol foremen and the patrol foreman in the industrial relations section, although not precisely production and maintenance supervisors, are concerned with the maintenance of the Company's property through prevention of theft;¹² thus their interests are related to those of other employees in the unit.¹³ We cannot agree with the Company's assertion that its foremen are "managerial" employees. They have stated that "executive employees who are in a position to formulate, determine, and effectuate management policies" may be considered "managerial employees."¹⁴ We find that the foremen involved in this proceeding, like the supervisors in the *Jones & Laughlin* case, are not involved in formulating or determining company policy.

Accordingly, we find that all foremen in the engineering and maintenance section of the Company's Baton Rouge plant, excluding the general foreman, and the assistant general foremen; all shift, unit and labor foremen in the operations section, excluding work leaders and operators; and the laundry foreman, patrol foreman, and shift patrol foremen in the industrial relations section; and excluding all other supervisory personnel not specifically classified as foremen, 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 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.¹⁵

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,

¹² The plant-protection employees, including the shift patrol foremen and patrol foremen, wear uniforms and are deputized by the Sheriff of East Baton Rouge Parish, but they are not militarized nor armed.

¹³ See *Matter of Wilson & Company, Inc.*, 66 N. L. R. B. 1375.

¹⁴ *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317.

¹⁵ As heretofore stated, we regard as saluting the expressed intention of the Union to establish a local for the supervisory employees involved herein, if the Board should find a separate unit of these employees to be appropriate. If the Union should effect such a change in organization within the near future and so notify the Regional Director in timely fashion, he is authorized to change the designation of the Union on the ballot in accordance therewith.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Ethyl Corporation, Baton Rouge, Louisiana, 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 Fifteenth 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 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 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 or not they desire to be represented by International Chemical Workers Union, AFL, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

I am constrained to disagree with the result in this case for the reasons set forth in my dissent in the *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, as well as the additional reasons set forth in my dissenting opinion in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386.