

In the Matter of BARRETT DIVISION, ALLIED CHEMICAL AND DYE CORPORATION and UNITED STEELWORKERS OF AMERICA, CIO

Case No. 9-R-2092.—Decided August 2, 1946

Mr. Howard Van Antwerp, Jr., of Ashland, Ky., for the Company.
Messrs. Paul R. Normile, Babe Shelton, and M. V. Vanover, all of Huntington, West Va., for the Union.

Margaret H. Patterson, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Barrett Division, Allied Chemical and Dye Corporation, Ironton, Ohio, herein called the Company, the National Labor Relations Board conducted a prehearing election by mail pursuant to Article III, Section 3, of the Board's Rules and Regulations, among employees of the Company in the alleged appropriate unit to determine whether or not they desire to be represented by the Union for the purpose of collective bargaining. The ballots were counted on May 8, 1946.

A Tally of Ballots was furnished the parties. The Tally shows that there were approximately 27 eligible voters, that 22 of these voters cast ballots, of which 8 were for the Union, 4 were against, and 9 were challenged. One void ballot was cast.

Thereafter, pursuant to Article III, Section 10, of the Rules and Regulations, the Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. The hearing was held at Ironton, Ohio, on May 28, 1946. The Company and the Union appeared and participated. All parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner reserved ruling upon the Company's motion to set aside the election. For reasons set forth hereinafter, the 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 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

Barrett Division, Allied Chemical and Dye Corporation, is a New York corporation with its principal office located in New York City. It operates a plant at Ironton, Ohio, which is the only plant involved in this proceeding.

At its Ironton, Ohio, plant the Company is engaged in the processing of coal tar. The principal raw material used in connection therewith is coal tar which will exceed an annual value of \$100,000, of which approximately 5 percent comes to the plant from outside the State of Ohio. The finished products will exceed an annual value of \$100,000, of which approximately 50 percent will be shipped to points outside the State of Ohio.¹

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

II. THE ORGANIZATION INVOLVED

United Steelworkers 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 recognize the Union as the collective bargaining representative of its employees in the alleged appropriate unit.

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 stipulated to the following appropriate unit: "All employees of the Company at its Ironton, Ohio, plant, excluding the superintendent, foremen, assistant foremen, chemists, policemen, watchmen, clerical and salaried employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or

¹ This is a new plant and operations were not commenced until November 1945.

otherwise effect changes in the status of employees, or effectively recommend such action."

A dispute exists as to whether or not certain construction-maintenance employees whose votes were challenged² by the Company are within the unit agreed upon.

Construction of the Company's Ironton, Ohio, plant began in November 1944. Most of the work was done by independent contractors. Because of material shortages, commencement of operations was delayed until November 1945, and thereafter, the Company found it necessary to hire a small crew of men to complete the new construction. In general, this work consisted of pipe fitting, pipe installing, excavating, grading, and small foundation work. A small amount of maintenance and repair work was also done by this crew on existing facilities. At one time the crew consisted of 11 men but at the time of the election there were only 9 and at the time of the hearing, only 6, working. The Company expects to finish its new construction work in August 1946, and plans to employ 2 all-round mechanics on a permanent basis to perform maintenance-construction functions. Although the Company has expressed its intention to retain as many of the construction crew as possible on operations jobs, there are no indications at the present time that it will be possible to do so. The Company alleged that at the time of hearing most of the 11 construction crew members had been told their employment was temporary. Six of these employees had been laid off temporarily from another company in Ironton where they had been permanent employees for several years. All of these men were subject to recall and at the time of the election 2 had already returned to their old jobs and did not vote in the election. Since the election, of the 9 whose ballots were challenged, 1 has returned to his old job, and 2 who are still working with the Company, admit that they may be recalled at any time. It was undisputed that none of the 9 employees was actually promised permanent employment. At most, the Company merely expressed the hope that permanent operating jobs might be found for the men upon the completion of the construction program.

We find that the function of new construction is not within the unit agreed upon by the parties.³ Inasmuch as all the employees whose ballots were challenged at the election were engaged principally in new construction at the time of the election, and only a very minor portion of their time was devoted to operational work, it does not appear that any of these employees has a sufficient interest in the re-

² The ballots of nine voters were so challenged.

³ See *Matter of Aluminum Company of America*, 52 N. L. R. B. 568; *Matter of Ohio Public Service Company*, 36 N. L. R. B. 1269.

sults of collective bargaining in the operating unit to entitle him to vote in an election of production and maintenance employees. We shall accordingly exclude the construction-maintenance employees engaged on new construction from the appropriate unit at the present time. However, inasmuch as the Company has stated that it may retain some of these employees in permanent operational jobs, this exclusion will not preclude such employees from inclusion in the unit for the purposes of representation upon their employment as regular operational workers for the Company.

At the hearing, the Company objected to the inclusion in the unit of three employees⁴ whose ballots were not challenged at the election. The Company contended that as part-time watchmen, these three men did not properly come within the scope of the stipulated production and maintenance unit which specifically excluded "watchmen."⁵ The record reveals that these men are neither armed nor uniformed, and that they spend at least 60 percent of their time as laborers in the operations department. Inasmuch as we have customarily included such employees in production and maintenance units⁶ and nothing in the record warrants their exclusion in this case, we shall include them in the unit as production workers.

Also at the hearing, the Company questioned the inclusion of Gabe Hughes, a leadman, who was permitted to vote without challenge. The Company contended that this employee is a supervisor. It was undisputed that Hughes does not have the right to hire or fire, that he performs the same manual work as the two to six men whose work he allegedly directs, and that he is not considered a foreman inasmuch as the Company's foremen do not do manual work. Although there was some testimony to the effect that Hughes' recommendations regarding hiring or discharging have been followed in some instances, and that his pay is slightly more than that of the other laborers, we find that his duties do not bring him within our usual definition of a supervisory employee and we shall include him in the unit as a production worker.

We find that all production and maintenance employees of the Company at its Ironton, Ohio, plant, excluding employees engaged on new construction, chemists, policemen, watchmen,⁷ clerical and salaried employees, the superintendent, foremen, assistant foremen, and all supervisory employees with authority to hire, promote, discharge,

⁴ Elias Perry, John Johnson, and Raymond Hughes.

⁵ The record does not indicate whether or not the Company employs any full-time watchmen.

⁶ See *Matter of Congoleum-Nairn, Inc.*, 64 N. L. R. B. 95; *Matter of Procter & Gamble Manufacturing Company*, 64 N. L. R. B. 1555; *Matter of Gulf Refining Company*, 64 N. L. R. B. 304.

⁷ This exclusion does not apply to the three part-time watchmen discussed *supra*.

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

In view of our conclusion set forth in Section IV, above, we hereby sustain the Company's challenges to the ballots of Lawrence C. Schilling, Edward McClellan, Delbert Click, Everett Hixon, R. B. Carter, Mr. Shockey, Mr. Sergeant, Mr. Brownstead, and Mr. Queen, construction-maintenance employees.

At the hearing the Company objected to the use of the mail ballot. Inasmuch as no evidence was introduced to indicate that the Regional Director abused his discretion as to the method to be used in conducting the election, or that the Company was in any way prejudiced thereby, we find the Company's objections without merit. We likewise find no merit in the Company's contention that the Regional Director's action in conducting the prehearing election was "illegal and unauthorized."

At the election the Company questioned the authenticity of the signature appearing on an envelope purporting to contain the ballot of one P. A. Hush, an employee. The Company produced samples of this employee's signature for comparison but the Field Examiner refused to permit the Company to challenge the ballot which was opened, commingled with the others, and counted. We find that the Field Examiner's refusal to permit the Company to challenge the ballot was in error. However, inasmuch as we have sustained all the Company's nine challenges, the ballot of P. A. Hush cannot affect the result of the election, and the error, therefore, affords no ground for setting aside the election.

In view of our decision to sustain the Company's challenge to the nine ballots, the results of the election held previous to the hearing show that the Union has secured a majority of the valid votes cast and we shall, therefore, certify the Union as the collective bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVES

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations, Series 3, as amended.

IT IS HEREBY CERTIFIED that United Steelworkers of America, CIO, has been designated and selected by a majority of all produc-

tion and maintenance employees of the Barrett Division, Allied Chemical and Dye Corporation, at its Ironton, Ohio, plant, excluding employees engaged on new construction, chemists, policemen, watchmen, clerical and salaried employees, the superintendent, foremen, assistant foremen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Mr. JOHN M. HOUSTON took no part in the consideration of the above Decision and Certification of Representatives.