

In the Matter of AMERICAN CYANAMID & CHEMICAL CORPORATION,
BRIDGEVILLE PLANT, EMPLOYER and UNITED FOREMEN OF AMERICA,
CIO, PETITIONER

Case No. 6-R-1394.—Decided August 7, 1946

Mr. Henry C. Little, of New York City, for the Employer.

Messrs. Philip M. Curran and A. J. Federoff, both of Pittsburgh,
Pa., for the Petitioner.

Mr. Emil C. Farkas, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Pittsburgh, Pennsylvania, on June 11, 1946, before Henry Shore, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the Employer moved to dismiss the petition on various grounds. The Trial Examiner referred this motion to the Board. For reasons hereinafter stated, the motion is hereby denied.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

American Cyanamid & Chemical Corporation, Bridgeville Plant, is a Delaware corporation engaged in the manufacture of chemical products. The Employer operates several plants throughout the United States, but only the Bridgeville, Pennsylvania, plant is involved in this proceeding. During the past 12 months, the Employer purchased raw materials for use at its Bridgeville plant, valued at more than \$100,000, of which approximately 35 percent was obtained from points outside the Commonwealth of Pennsylvania. During the same period, the Employer manufactured finished products at this plant valued in excess of \$1,000,000, of which approximately 50

percent was shipped to points outside the Commonwealth of Pennsylvania.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.¹

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

The Employer moved to dismiss the petition on the ground, *inter alia*, that supervisory employees are not employees within the meaning of the Act. The status of supervisory personnel has been considered in a number of cases. Both the Board² and the courts³ have held that, in relation to their employer, supervisors are employees within the meaning of the Act. Accordingly, we find that the supervisors involved in this proceeding are employees within the meaning of the Act.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit of head workmen and assistant foremen, including assistant mechanical foreman and assistant shipping supervisor, but excluding manager, assistant manager, production manager, general shift foreman, assistant general shift foreman, general

¹ The Petitioner admits only supervisory employees into membership.

In its motion to dismiss the petition, the Employer contends that the Petitioner is not a labor organization within the meaning of the Act. The term "labor organization" under the provisions of Section 2 (5) of the Act, means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The Petitioner is clearly a labor organization within the meaning of this definition.

² *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348; *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and 64 N. L. R. B. 1212; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298; *Matter of The Midland Steel Products Company*, 65 N. L. R. B. 997; *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386; *Matter of American Locomotive Company*, 65 N. L. R. B. 1123.

³ *N. L. R. B. v. Armour & Co.*, 154 F. (2d) 570 (C. C. A. 10); *Jones & Laughlin Steel Corporation v. N. L. R. B.*, 146 F. (2d) 833 (C. C. A. 5); *N. L. R. B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667 (C. C. A. 8).

mechanical foreman, machine shop foreman, and all other employees. The Employer does not disagree with the composition of the proposed unit but contends that no unit of supervisors may for purposes of collective bargaining constitute an appropriate unit within the meaning of the Act, and that the Petitioner, an affiliate of a labor organization which represents rank and file employees, should not be permitted to act for the supervisory personnel involved herein.⁴

The Employer's Bridgeville plant, with which we are herein concerned, is under the supervision of a plant manager who is in charge of the over-all operations of the plant. Under the supervision of the manager are the department heads, variously classified as "supervisors,"⁵ general mechanical foreman, machine shop foreman, general shift foreman, assistant general shift foreman, and stores and shipping supervisor. This constitutes the second level of supervision and consists of nine persons, all of whom are salaried. For the most part, these are professional employees such as chemists and chemical engineers. Below this second level of supervision, and in immediate charge of the rank and file employees are the employees involved in this proceeding. The record discloses that all these bottom level supervisors are hourly rated employees, do no manual work, and are non-professional in character. They have the power to make effective recommendations with respect to the hiring, discharging, and disciplining of employees under their supervision, and they participate as an Employer representative in the first step of the grievance procedure established for the rank and file employees. However, they neither formulate nor take part in the determination of general policies established by the Employer.

In previous cases involving supervisors comparable to those who are the subject of the present proceeding, we have considered and rejected as untenable the arguments that no unit of supervisors may be appropriate⁶ and that an affiliate of a rank and file union may not represent supervisory employees.⁷ In accordance with those decisions, we find the similar arguments advanced by the Employer in this present proceeding to be without merit:

⁴ The Employer has a contract with District 50, United Mine Workers of America, affiliated with the American Federation of Labor, covering rank and file production, maintenance, and shipping and stores employees. The contract between the Employer and District 50 excludes from its coverage the employees in the unit petitioned for in this proceeding.

⁵ The term "supervisors" is used here as generally used in the chemical industry, and is the equivalent of a department or area superintendent in other industries. It refers to a direct title and not to a description of duties.

⁶ *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; *Matter of Westinghouse Electric Corporation (East Springfield Works)*, 66 N. L. R. B. 1297.

⁷ *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386; *Matter of American Locomotive Company*, 67 N. L. R. B. 1123.

We find that all head workmen and assistant foremen employed by the employer at its Bridgeville plant, including assistant mechanical foreman and assistant shipping supervisor, but excluding manager, assistant manager, production manager, general shift foreman, assistant general shift foreman, general mechanical foreman, machine shop foreman, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with American Cyanamid & Chemical Corporation, Bridgeville plant, Bridgeville, Pennsylvania, 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 Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, 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 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 United Foremen of America, CIO, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinions in *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386, I am compelled to dissent from the majority opinion herein.