

In the Matter of NATIONAL ANILINE DIVISION, ALLIED CHEMICAL AND DYE CORPORATION, EMPLOYER *and* LEAD BURNERS LOCAL 677, UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, A. F. OF L., PETITIONER

Case No. 3-R-1281.—Decided December 19, 1946

Mr. Lyman M. Bass, of Buffalo, N. Y., for the Employer.

Mr. Daniel B. Shortal, of Buffalo, N. Y., for the Petitioner.

Mr. Elwood Moffett, of Buffalo, N. Y., for the Intervenor.

Mr. Lewis H. Ulman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Buffalo, New York, on July 30, 1946, before Cyril W. O'Gorman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the hearing the hearing officer granted a motion of District 50, United Mine Workers of America, herein called the Intervenor, to intervene.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Allied Chemical and Dye Corporation, a New York corporation, operates its National Aniline Division plant in Buffalo, New York, where it is engaged in the manufacture of chemicals and dyes. During the past year, raw materials valued at more than \$4,000,000 were shipped to this plant. More than 60 percent of such materials was shipped from points outside the State of New York. During the same year, finished products exceeding \$5,000,000 in value were shipped from this plant. More than 60 percent of such products was shipped to points outside the State.

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 and the Intervenor are both labor organizations affiliated with the American Federation of Labor, and both claim to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Petitioner, by letter dated January 25, 1945, requested recognition as the collective bargaining representative for the Employer's lead burners. The Employer denied this request, stating that its lead burners were covered by an existing contract with the Intervenor. Since that time the Petitioner has made no formal request of the Employer for recognition; however, at the hearing herein the Employer took the position that it would not recognize the Petitioner in the absence of certification by the Board.¹

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Petitioner contends that the lead burners and lead burners' apprentices at the Employer's plant at Buffalo, New York, constitute a separate appropriate bargaining unit. The Employer and the Intervenor contend that the proposed craft unit is not appropriate, on the grounds (1) that all skilled and unskilled production and maintenance workers, with the exception of welders and their apprentices, constitute an appropriate unit; and (2) that the history of collective bargaining at the plant over a period of years demonstrates that the broad unit is the only appropriate one, precluding bargaining on a craft basis at this time.

In our prior determination concerning the Employer's plant we found that the Employer's welders, combination welders and lead burners, and welders' apprentices could properly function as a separate bargaining unit. Thereafter, these craft employees demonstrated in a self-determination election that they desired to bargain separately from the plant-wide unit of production and maintenance workers. Since this election, the Associated Welders of Western New York, Inc., has bargained for the remainder of the production and maintenance employees. The Petitioner herein was not in existence at the time of our prior determination, and no one sought, and con-

¹ On June 28, 1946, the Employer entered into a contract with the Intervenor covering all of the Employer's production and maintenance workers, including lead burners, but excluding welders, combination welders and lead burners, and welders' apprentices. This unit is the one established under a previous Board decision (*Matter of National Aniline Division, Allied Chemical and Dye Corporation*, 40 N. L. R. B. 1351). However, the job classification "combination welders and lead burners," which differed from that of "lead burner," has been abolished since the Board's prior decision. Neither the Employer nor the Intervenor contends that the contract is a bar to this proceeding.

sequently no one secured, a self-determination election among the Employer's lead burners. Organization among the lead burners began in 1943 and the Petitioner's charter was issued in July 1944.

The Employer's Buffalo plant is made up of approximately 75 buildings, which cover an area of approximately 50 acres. The lead burners have a shop where they perform their shop work, they also work on tanks and other equipment located throughout the plant area. Although the nature of their employment brings the lead burners into close contact with other craftsmen and production employees, they are clearly distinguishable from the other craft groups. They receive 25 cents an hour more than any other craftsmen employed at the plant and at least 5 years of apprentice training is necessary before journeyman status can be achieved. We find that the lead burners comprise a clearly defined craft group which, in the absence of other considerations, may properly constitute a separate bargaining unit.²

As we have had occasion to state, the Board, in deciding whether or not to conduct a self-determination election for a craft group when there has been a history of collective bargaining on a broader basis, is confronted with the necessity of balancing two opposing interests. On the one hand, the interests of stability and certainty in labor relations favor adherence to existing bargaining patterns; on the other hand, the cohesiveness and special interests of a true craft group often indicate the appropriateness of groups limited to members of a particular craft. Of necessity no hard and fast rule can be laid down in advance as an absolute guide in determining when one or the other of these policy considerations is to prevail.

In the present case the lead burners have demonstrated that they constitute a true craft group in an industry in which the Board has established similar craft units,³ and there is no indication that such units do not function successfully to promote harmonious labor relations. We do not believe that the circumstance of bargaining on a more inclusive basis is sufficient in itself to deny the lead burners the opportunity of deciding at the present time whether they desire to continue to be represented as part of the production and maintenance unit, or whether they desire to bargain as a separate unit. This is particularly true because the lead burners were not organized at the time of the Board's prior determination, and have never previously

² See *Matter of National Lead Company, Titanium Division*, 63 N. L. R. B. 903; *Matter of E. I. du Pont (Grasselli Division)*, 65 N. L. R. B. 390; *Matter of E. I. du Pont de Nemours and Company*, 66 N. L. R. B. 545.

³ See *Matter of National Lead Company, Titanium Division*; *Matter of E. I. du Pont (Grasselli Division)*; *Matter of E. I. du Pont de Nemours and Company, supra*. While the chemical industry is not centered in any one area of the United States, we find it significant that in at least one other case (*Matter of E. I. du Pont de Nemours and Company, supra*) a separate unit of lead burners has been established in the Buffalo area.

had an opportunity to vote on this issue. Under these circumstances we believe that the lead burners should be given an opportunity at this time to indicate whether they desire to be represented in a craft unit or in a plant-wide unit.

In accordance with the foregoing, we shall direct that an election be held among the Employer's lead burners and lead burners' apprentices excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. We shall make no determination of the unit issue until the results of the election shall have been disclosed. If the lead burners select the Petitioner they will be taken to have indicated their desire to be established as a separate bargaining unit; if they select the Intervenor they will have indicated their desire to remain a part of the existing production and maintenance unit.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with National Aniline Division, Allied Chemical and Dye Corporation, 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 Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among lead burners and lead burners' apprentices employed by the Employer at its Buffalo, New York, plant, 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, and all supervisory employees with authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees, or effectively recommend such action, 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, A. F. of L., or by District 50, United Mine Workers of America, A. F. of L., for the purposes of collective bargaining, or by neither.