

IN the Matter of ALLIED CHEMICAL & DYE CORPORATION (BARRETT DIVISION) and DISTRICT 50 (CHEMICAL DIVISION), UNITED MINE WORKERS OF AMERICA

Case No. 2-R-5814.—Decided February 6, 1946

Pitney, Hardin & Ward, by Messrs. *John R. Hardin*, of Newark, N. J., and *R. B. Laws*, of New York City; and *Mr. W. F. Glimm*, of Elizabeth, N. J., for the Company.

Mr. Yelverton Cowherd, of Washington, D. C., and Messrs. *O. Hartman*, *Howard J. Gill*, and *Earl Batch*, all of Newark, N. J., for the UMW.

Mr. Joseph Carrella, of Philadelphia, Pa., for the Paper Workers.

Mr. Harold Krieger, of Jersey City, N. J., for the Warehousemen.

Mr. Oscar Geltman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition and an amended petition duly filed by District 50 (Chemical Division), United Mine Workers of America, herein called the UMW, alleging that a question affecting commerce had arisen concerning the representation of employees of Allied Chemical & Dye Corporation (Barrett Division), Elizabeth, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. The hearing was held at Newark, New Jersey, on October 23, 1945. The Company, the UMW, International Brotherhood of Paper Workers, A. F. of L., herein called the Paper Workers, and General Warehousemen's Union Local 892, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, A. F. of L., herein called the Warehousemen, appeared and participated.¹ All

¹ At the hearing, the Trial Examiner granted the Paper Workers' motion to intervene. The Warehousemen at first sought an adjournment, but thereafter participated in the hearing without having made a motion to intervene. At the close of the hearing, counsel for the UMW moved to strike from the record all testimony adduced on behalf of the Warehousemen and all statements made by its counsel. Counsel for the Warehousemen then moved that the Warehousemen be considered as having intervened in the proceeding. Both motions were referred to the Board for determination. Because the record discloses that the Warehousemen has been the exclusive representative of the employees in the

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. 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

Allied Chemical & Dye Corporation is a New York corporation. It operates a plant in Elizabeth, New Jersey, known as the Barrett Division, where it is engaged in the manufacture of coal tar chemicals, paving materials, and roofing materials. During the year 1944, the Barrett Division used raw materials valued in excess of \$500,000, of which approximately 75 percent represented shipments from points outside the State of New Jersey. During the same period, the Barrett Division produced finished products valued in excess of \$1,000,000, more than 75 percent of which represented shipments to points outside the State.

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

II. THE ORGANIZATIONS INVOLVED

District 50 (Chemical Division), United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

International Brotherhood of Paper Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

General Warehousemen's Union Local 892, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 24, 1945, the UMW wrote to the Company, stating that it represented a majority of the employees at the Barrett Division, and

unit sought herein, and because there is an existing contract between the Warehousemen and the Company relating to such employees, we are persuaded that the Warehousemen has an interest in the proceeding. We hereby grant the Warehousemen's motion and deny the motion of the UMW.

After the hearing, the Warehousemen submitted to the Board a formal motion for leave to intervene. We find it unnecessary to pass upon this motion, in view of our action with respect to the Warehousemen's earlier motion.

requesting a conference for the purpose of negotiating terms and conditions of employment. On July 27, 1945, the Company replied, stating that in view of the fact that it was then negotiating with the Warehousemen as the certified exclusive bargaining representative of certain of its employees, "it would appear that any question of representation would have to be raised by the National Labor Relations Board." On September 4, 1945, the Company and the Warehousemen entered into an agreement covering Barrett Division employees. Whereupon, on September 19, 1945, the UMW filed its petition herein.

On December 26, 1942, as the result of a cross-check conducted under Board auspices, the Acting Regional Director for the Second Region found and determined that the Warehousemen was the statutory representative of the Company's employees in substantially the same unit described in the instant petition.² Thereafter, pursuant to a National War Labor Board Directive Order, the parties entered into an agreement on August 14, 1943, covering these employees. This agreement was dated October 25, 1942, and continued in effect until October 25, 1943. After its termination, several disputed issues were again certified to the War Labor Board. Although the War Labor Board issued several orders from time to time thereafter, directing the parties to enter into signed agreements incorporating specified provisions with respect to terms and conditions of employment,³ the parties did not enter into a new agreement until September 4, 1945. This new agreement was dated October 25, 1943, and provides that it shall continue in effect until October 25, 1945, "and thereafter from year to year unless one party or the other gives notice in writing to the opposite party at least thirty (30) days prior to the expiration of the agreement of intention to terminate said agreement."

The Warehousemen contends, in its brief, that its existing agreement with the Company constitutes a bar to the present proceeding;⁴ the Company takes no position. We find no merit in the Warehousemen's contention. The Warehousemen is not a newly organized or certified labor organization whose initial efforts to secure benefits have been of no avail because of voluntary submission to the proce-

² Case No 2-R-3703.

³ In this connection, copies of the following National War Labor Board orders were received in evidence: Regional Interim Directive Order dated October 24, 1944; Regional Directive Order dated January 24, 1945; Regional Supplemental Directive Order dated March 26, 1945; National War Labor Board Directive Order dated June 15, 1945, denying review of Regional Directive Order of January 24, 1945.

⁴ The Warehousemen's argument, while not clear, apparently is to the effect that (a) the delay in securing this agreement was due to dilatory tactics by the Company; (b) the Warehousemen was obliged to acquiesce in this delay, or to violate its pledge to engage in no strikes during the war, and should not be penalized for observance of this pledge; and (c) the period between September 4, 1945, when the agreement was executed, and October 25, 1945, the date of its expiration, was not a reasonable period in which to obtain benefits under the contract; and the agreement should therefore be construed as having been renewed to October 25, 1946 by operation of the automatic renewal clause.

dures of the War Labor Board.⁵ On the contrary, it had already completed an initial bargaining program with the Company before it entered into the existing agreement. Therefore, under well established principles of the Board, the existing agreement, entered into after the UMW's conflicting representation claim was presented, cannot constitute a bar to the present proceeding.⁶

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UMW represents a substantial number of employees in the unit hereinafter found appropriate.⁷

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 Company, the UMW, and the Paper Workers agree that all hourly paid production and maintenance employees at the Company's Elizabeth, New Jersey, plant, excluding watchmen, clerical and office personnel, and supervisory employees constitute a unit appropriate for purposes of collective bargaining. This is the same unit as the one covered in the agreements entered into on August 14, 1943, and on September 4, 1945, by the Company and the Warehousemen.⁸ Nevertheless, the Warehousemen now contends that this unit is inappropriate, and alleges that the production employees and the maintenance employees belong in separate units. It has presented no evidence in support of its present position.⁹ Under all the circumstances, and particularly in view of the past bargaining history, we find the contention to be without merit.

We find that all hourly paid production and maintenance employees at the Company's Elizabeth, New Jersey, plant, excluding watchmen,

⁵ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

⁶ *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802, *Matter of Cudahy Brothers Company*, 64 N. L. R. B. 896, *Matter of Lancaster Iron Works, Inc.*, 65 N. L. R. B. 105.

⁷ The Trial Examiner reported that the UMW submitted 75 membership cards, 68 dated July 1945, 1 dated August 1945, and 6 undated; and that the Paper Workers submitted 16 membership cards. There are approximately 148 employees in the appropriate unit.

The Warehousemen made no showing of authorization cards, but will be accorded a place on the ballot by virtue of its interest in the proceeding as noted in footnote 1, *supra*.

At the hearing, the Warehousemen offered to prove that UMW membership cards were solicited on company time, with company approval. The offer was rejected. Inasmuch as such evidence is immaterial to the issues in a representation proceeding, we sustain the ruling of the Trial Examiner.

⁸ Both agreements described the unit as "all hourly paid employees (exclusive of watchmen, clerical and office workers, and supervisory personnel) . . . at the Elizabeth Plant." Attached to the agreement executed August 14, 1943, is a list of employee categories and the wage rate for each category. This list clearly indicates that the employees involved are production and maintenance employees.

⁹ In its brief, the Warehousemen requests that it be given leave "to adduce further testimony before the Examiner . . . on the question of proper bargaining unit or units." Inasmuch as the Warehousemen was afforded full opportunity to, and did in fact, participate in the hearing, the request is denied.

clerical and office personnel, 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, 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 the 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.

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 Allied Chemical & Dye Corporation (Barrett Division), Elizabeth, New Jersey, 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 Second 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 they desire to be represented by District 50 (Chemical Division), United Mine Workers of America, or by International Brotherhood of Paper Workers, A. F. of L., or by General Warehousemen's Union Local 892, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, A. F. of L., for the purposes of collective bargaining, or by none of these labor organizations.