

In the Matter of THE BARRETT DIVISION, ALLIED CHEMICAL & DYE CORPORATION and OIL WORKERS INTERNATIONAL UNION, CIO, LOCAL #398

Case No. 4-R-1856.—Decided February 8, 1946

Mr. John B. Martin, of Philadelphia, Pa., for the Company.

Messrs. E. J. Steiger and *H. P. Medler*, of Philadelphia, Pa., for the Union.

Mr. Samuel G. Hamilton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, CIO, Local #398, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Barrett Division, Allied Chemical & Dye Corporation, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. The hearing was held at Philadelphia, Pennsylvania, on October 23, 1945. 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. 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 consisting of various operating divisions, of which The Barrett Division is one. The Barrett Division operates 15 plants throughout the eastern part of the United States, among which is the plant at Margaret and

Bermuda Streets, Philadelphia, Pennsylvania, hereinafter referred to as the Frankford Plant, which is the only plant involved in these proceedings. At the Frankford Plant the Company is engaged in the manufacture of various types of coal tar chemicals.

During the year 1944 the Company used at its Frankford Plant various raw materials, principally coal tar, with a value in excess of \$250,000, of which amount approximately 60 percent was shipped to the Frankford Plant from various points outside the Commonwealth of Pennsylvania. During the same period the Company's finished products at the Frankford Plant were valued in excess of \$250,000, of which at least 60 percent was shipped from the Frankford Plant to various points outside the Commonwealth.

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

II. THE ORGANIZATION INVOLVED

Local #398, Oil Workers International Union, 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 grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

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 appropriate.¹

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 seeks a unit composed of all office clerical employees at the Company's Frankford Plant, exclusive of confidential and supervisory employees. The Company contends that all of its office clerical employees are either confidential, managerial, or supervisory employees and therefore should not be included in any bargaining unit. The parties are in agreement that certain office clerical employees should

¹The Field Examiner reported that the Union submitted 28 application-authorization cards, of which 18 were dated in June 1945, 5 in July 1945, and 5 were undated; and that the alleged appropriate bargaining unit consisted of 51 employees.

be excluded because they are either confidential or supervisory. The categories excluded by agreement are the plant accountant, the assistants to the plant accountant, the local buyer, the traffic and shipping supervisor, the engineering department appropriations clerk, the assistant to the production planning supervisor, the pay-roll section senior clerk, the office service section head, and the secretary to the works manager. They also agree to exclude shop clericals.²

Purchasing Department

Assistants to the local buyer: The purchasing agent or local buyer is admittedly a supervisory employee within the meaning of the Board's definition. The two assistants to the local buyer spend virtually their entire time in the purchase of certain commodities and raw materials. The balance of their time is spent in the supervision of the typist and stenographers in the Purchasing Department. While there is some evidence that they have the authority to recommend the discharge, discipline, or promotion of the employees under their supervision, there is no convincing evidence that their recommendations are effective. However, in purchasing supplies and commodities they exercise a function closely allied to management. Accordingly, we shall exclude the two assistants to the local buyer from the unit.³

Stenographer to the local buyer: This employee handles dictation and correspondence of the local buyer relating to all matters involving the operation of the Purchasing Department, including rate changes, disciplinary action, promotions, hiring, and discharging of its employees. Because in the normal course of her duties she is in a position to obtain advance information of the Company's position concerning confidential matters relating to labor relations, we shall exclude her from the unit.⁴

Clerk and typists: These employees exercise the normal functions of their classification. They type purchase orders and follow up and expedite deliveries of raw materials and supplies. The Company contends that they perform duties which are confidential in their nature for the reason that they have access to information with respect to the materials used, their cost, and where they are obtained. There is no showing that these employees have access to information

² A contract in existence between the Union and the Company covers production and maintenance and shop clerical employees at the Frankford Plant. The shop clerical employees comprise four process foremen's clerks, two maintenance department clerks, a car movement clerk, and a process foremen's junior clerk

³ See *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066; *Matter of Inland Steel Container Company*, 56 N. L. R. B. 138; *Matter of Hudson Motor Car Company*, 55 N. L. R. B. 509

⁴ See *Matter of General Cable Corporation*, 55 N. L. R. B. 1143.

which relates directly to the Company's labor relations. Accordingly, we shall include them in the unit.⁵

Traffic and Shipping Department

Senior clerk: The traffic and shipping supervisor is admittedly a supervisory employee within the meaning of the Board's definition. The senior clerk acts in his absence. There are five employees in the Traffic and Shipping Department. The senior clerk spends more than 80 percent of his time in clerical duties. He has no authority to discharge and discipline employees. Although the Company claims that he has authority to recommend such action, there is no evidence that his recommendations have been effective. Accordingly, we shall include the senior clerk in the unit.⁶

*Stenographer or secretary to the Traffic and Shipping Department supervisor:*⁷ This employee handles dictation and correspondence of the traffic and shipping supervisor relating to all matters involving the operation of the Traffic and Shipping Department. She bears the same relationship to the Shipping Department supervisor as the stenographer to the local buyer bears to the local buyer. Because in the normal course of her duties she is in a position to obtain advance information of the Company's position concerning confidential matters relating to labor relations, we shall exclude her from the unit.⁸

Clerk and typists: These employees keep and maintain records relating to the income and outgo of materials and finished products. Because they have knowledge of or access to this information, the Company maintains that they are confidential employees. There is no showing that these records directly concern the Company's labor relations. Accordingly, we shall include the clerks and typists in the unit.⁹

Production Record or Accounting Department

Senior clerks and clerks: There are two senior clerks and three clerks in this department. The senior clerks study and analyze the production records from the standpoint of deviations from the budgets and the reasons therefor. The junior clerks supply the senior clerks with the data from which they make their analyses. Because they have knowledge of or access to the production records of the operating departments, the Company takes the position that the senior clerks

⁵ See *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 854; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant)*, 34 N. L. R. B. 108.

⁶ See *Matter of Armour and Company, doing business as Armour Creameries*, 65 N. L. R. B. 353.

⁷ L. Matecka.

⁸ See *Matter of General Cable Corporation*, 55 N. L. R. B. 1143.

⁹ See *Matter of Bethlehem Steel Company, supra*; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant), supra*.

are managerial or confidential, and the junior clerks confidential employees. Although the record shows that these clerks have knowledge of or access to important information, there is no showing that their duties concern the Company's labor relations or that they have knowledge of or access to information related thereto. Access to important information is not sufficient in itself to justify their exclusion.¹⁰ We shall include the clerks in the production record department in the unit.

Planning and Maintenance Departments

The Planning Department engages in planning and scheduling of production with respect to the selling department, shipping schedules, and customers' requirements. The maintenance department keeps maintenance records, records of expenditures on jobs, and checks performance against maintenance budgets. There are *three clerks in the planning department* and *two clerks in the maintenance department*. The Company's contention that, because of the nature of their duties, these clerks should be excluded from the unit as confidential employees, is clearly without merit. We shall include them.¹¹

Engineering Department

The *expediter* follows the deliveries and schedules and expedites delivery of all equipment which is due in the plant for construction and repair work. Seventy-five percent of his time is spent in the office where he checks records of inspected material against purchase orders and specifications, or engages in telephone expediting. The *clerks* are occupied in handling and filing designs and blueprints of machinery and processes, the *typist* in keeping appropriations records prepared, and the *photostat and blueprint operator* in making blueprints and photostating pictures. The Company's contention that these employees are confidential because they have technical knowledge or access to designs, blueprints, and specifications of its equipment, much of which is of special design, is without merit. We shall include these employees in the Engineering Department in the unit.¹²

Pay-roll Department

There are four employees in the Pay-roll Department who are carried on the Company's pay roll as *junior clerks*. They prepare

¹⁰ See *Matter of Bethlehem Steel Company, supra*; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant), supra*.

¹¹ See *Matter of Bethlehem Steel Company, supra*; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant), supra*.

¹² See *Matter of Bethlehem Steel Company, supra*; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant), supra*.

the weekly pay roll. Because they have knowledge of the wages, rates, and payment of all employees on the pay roll, the Company contends that they are confidential employees and should be excluded from the unit. However, knowledge of confidential pay-roll information is not sufficient in and of itself to bring an employee within the classification of a confidential employee as that term is used by the Board. We find the junior clerks are not confidential employees and we shall include them in the unit.¹³

Personnel Department

This department, in addition to its supervisor, consists of three clerks, two of whom are classified as *junior clerks* and one as a *stenographer*. One of these clerks interviews applicants for employment and acts as assistant to the head of the department. He directs the work of the other clerk and the stenographer and is responsible for the maintenance of the personnel files. The other clerk and the stenographer are also charged with the preparation and care of personnel records and have access to them in the normal course of their employment. The history, record, ratings, and all other data respecting the Company's employees generally or prospective employees are readily accessible to them. Because through access to personnel files, or in the performance of their duties, they acquire information pertaining to confidential labor relations matters, we shall exclude them from the unit.¹⁴

Miscellaneous alleged confidential employees

The *construction record clerk* records appropriation data, including the performance of construction jobs under their respective appropriations. The *accounts payable clerk* has access to the amounts paid for material. The *distribution code clerk* has access to cost and production records. The *calculating machine operator* has access to the records she sets up. The *power department clerk* tabulates the records of the boiler plant operations and checks the costs. The *receiving clerk* has knowledge of the materials bought and their cost to the Company. The information which the above employees may possess in no way relates to the problem of labor relations. The possession of important information is of itself insufficient to justify exclusion from the unit. We shall, therefore, include these employees in the unit.¹⁵

Mail attendants: The Company employs two mail attendants or operators who carry and deliver the mail, reports, and recommendations

¹³ See *Matter of Worcester Gas Light Company*, 63 N. L. R. B. 740.

¹⁴ See *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066, *Matter of Electric Auto Late Company*, 57 N. L. R. B. 723.

¹⁵ See *Matter of Bethlehem Steel Company*, *supra*; *Matter of Creamery Package Manufacturing Company (Lake Mills Plant)*, *supra*.

within the plant. The Company contends that they should be excluded because it is possible for them to read the mail. Because the normal performance of their duties does not afford access to such information, we are of the opinion that these employees are not confidential, and shall, therefore, include them within the unit.¹⁶

Telephone operators: The Company employs two telephone operators. Although they are not supposed to listen to telephone conversations, the Company contends that they should be excluded as confidential employees because it is possible for them to overhear confidential telephone conversations. We find no merit to this contention. We shall, accordingly, include all telephone operators in the unit.¹⁷

Stenographers who act as secretaries to department heads: In addition to the secretary to the works manager who is excluded from the unit by agreement, there are four stenographers who act as secretaries to department heads. They act as secretaries to the maintenance supervisor,¹⁸ the chief chemist, the plant engineer, and the division head in charge of general plant service. The evidence is uncontradicted that these stenographers receive confidential dictation from department heads; are familiar with ratings, promotions, demotions, proposed lay-offs, discharges, and disciplinary actions; and generally are familiar with the Company's position respecting its labor relations. They receive advance information on disposition of grievances arising under the Union's contract covering the Company's production and maintenance employees. We shall, therefore, exclude them from the unit.¹⁹

The plant office typist and plant office stenographer: The plant office typist performs services for supervisors in the Company's various departments. She types their recommendations concerning transfers, disposition of grievances, ratings, discipline, and promotions. The plant office stenographer performs substantially the same duties as the plant office typist, with the difference that the stenographer also takes dictation from various supervisors in addition to typing. In the normal course of their duties, they are in a position to obtain advance knowledge of the Company's position concerning confidential matters relating to labor relations. We shall, therefore, exclude them from the unit.²⁰

We find that all office clerical employees at the Company's Frankford Plant, including clerks and typists in the purchasing department;

¹⁶ Cf. *Matter of General Cable Corporation*, 55 N. L. R. B. 1143

¹⁷ See *Matter of General Cable Corporation*, *supra*

¹⁸ A Henry is classified as maintenance department clerk.

¹⁹ See *Matter of Electric Auto Lite Company*, 57 N. L. R. B. 723; *Matter of General Cable Corporation*, *supra*

²⁰ See *Matter of Electric Auto Lite Company*, *supra*; *Matter of General Cable Corporation*, *supra*

the senior clerk and the clerk and typists in the traffic and shipping department; the senior clerks and clerks in the production record or accounting department; the clerks in the planning and maintenance departments; the expeditor, clerks, typist and photostat and blueprint operator in the engineering department; the junior clerks in the payroll department; the construction record clerk; the accounts payable clerk; the distribution code clerk; the calculating machine operator; the power department clerk; the receiving clerk; the mail attendants; and the telephone operators, but excluding the plant accountant; the assistants to the plant accountant; the local buyer; the traffic and shipping supervisor; the engineering department appropriations clerk; the assistant to the production planning supervisor; the payroll section senior clerk; the office service section head; the secretary to the works manager; assistants to the local buyer of the purchasing department; shop clerical employees; the stenographer to the local buyer of the purchasing department; the stenographer or secretary to the traffic and shipping department supervisor; all employees of the personnel department; the stenographers who act as secretaries to the maintenance supervisor; the chief chemist, the plant engineer, and the division head in charge of general plant service; the plant office typist and plant office stenographer, 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 employees in the appropriate unit who were employed during the payroll 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 The Barrett Division, Allied Chemical & Dye Corporation, Philadelphia, Pennsylvania, an election by secret ballot shall be conducted as early as pos-

sible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 Oil Workers International Union, CIO, Local #398, for the purposes of collective bargaining.