

In the Matter of THE MIDVALE COMPANY and FEDERATION OF ARCHITECTS
ENGINEERS, CHEMISTS AND TECHNICIANS, C. I. O.

Case No. 4-R-1415.—Decided August 15, 1944

Mr. Frederick H. Knight, of Philadelphia, Pa., for the Company.
Mr. Martin M. Cooper, of New York City, and *Mr. Theodore Vincent*, of Philadelphia, Pa., for the C. I. O.
Mr. Edward Davis, of Philadelphia, Pa., for the A. F. L.
Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Federation of Architects, Engineers, Chemists and Technicians, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The Midvale Company, 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. Said hearing was held at Philadelphia, Pennsylvania, on June 23 and 28, 1944. The Company, the C. I. O., and Federal Labor Union No. 1887, A. F. L., herein called the A. F. L., 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 an 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

The Midvale Company, a Delaware corporation, has its principal office and place of business in Philadelphia, Pennsylvania, where it is

57 N. L. R. B., No 208.

engaged in the manufacture of various steel products. In addition to its Philadelphia plant, which is the only plant involved in these proceedings, the Company maintains offices in Pittsburgh, Pennsylvania, Chicago, Illinois, New York City, Washington, D. C., San Francisco, California, and Cleveland, Ohio. At its Philadelphia plant the Company uses various raw materials, principally ores, of which at least 90 percent is obtained from points outside the Commonwealth of Pennsylvania. During the last fiscal year of its operations, the Company manufactured at its Philadelphia plant 130,140 net tons of products having a value of approximately \$66,280,000, of which amount about 80 percent was shipped from the Company's Philadelphia plant to various points in the United States.

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

II. THE ORGANIZATIONS INVOLVED

Federation of Architects, Engineers, Chemists and Technicians, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Federal Labor Union No. 1887, affiliated with the American Federation of Labor, 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 C. I. O. as the exclusive bargaining representative of employees of the Company until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the C. I. O. 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 C. I. O. seeks a unit of laboratory employees comprising employees of the chemical and the research laboratories, respec-

¹ The Field Examiner reported that the C. I. O. submitted 32 designation cards dated in April 1944, from a total of approximately 55 employees in the unit claimed appropriate by the C. I. O.

tively.² The A. F. L. contends (1) that the employees in the proposed C. I. O. unit should be included within a plant-wide unit composed of production, maintenance, and salaried employees; (2) that if the employees in the proposed C. I. O. unit are not included in such plant-wide unit, they should be included in a separate unit of all the Company's salaried employees. The Company agrees with the second contention of the A. F. L.

The contention of the A. F. L. that salaried laboratory employees are properly a part of a plant-wide unit is inconsistent with the bargaining history between the Company and the A. F. L., wherein it appears that all salaried employees including salaried laboratory employees have been expressly omitted from the contracts between the parties extending over a period of approximately 2 years and covering all hourly production employees. Moreover, although the A. F. L. admits salaried employees to membership and has on request bargained for individual salaried employees with respect to grievances and other working conditions,³ the A. F. L. has never been recognized by the Company as the bargaining representative for the salaried employees generally, and has never entered into any agreement on behalf of such employees of the Company. In contrast therewith, the evidence in the record to the effect that the laboratory employees as a group perform similar duties of a technical nature;⁴ that they are largely segregated from the other plant employees; and that they are under the general supervision of a separate superintendent having substantial independent authority including the right to hire and discharge, indicates that the laboratory employees constitute a clearly identifiable group having common interests. While the laboratory employees have on occasion been included in production and maintenance units when it appeared that no labor organization desired to represent them as a separate group,⁵ the right of laboratory employees

² The laboratory employees consist largely of salaried employees in the categories of research assistants, pyrometrists, assistant pyrometrists, pyrometrists' helpers, chemical operators, and chemists' assistants. The first four classifications are attached to the research laboratory while the last two groups represent employees in the chemical laboratory. Research assistants, whose earnings approximate those of chemical operators, are engaged in original research and the devising of new methods for improvement of the Company's product. Pyrometrists are electrical instrument men who maintain and repair pyrometers used in measuring temperatures. Chemical operators make standard analyses with respect to raw materials and finished products. Chemists' assistants are learners in training for positions as chemical operators.

³ The A. F. L. has continued to bargain for certain salaried employees who formerly were hourly employees and members of the A. F. L. but whose status has been changed to that of salaried employees. There is, however, no evidence that the A. F. L. has made any substantial progress in the organization of the salaried laboratory employees.

⁴ While it is true that the employees mentioned are not of a particularly high degree of skill, it appears, nevertheless, that in order to hold their positions they require a certain amount of high school chemistry or its equivalent which can be obtained by practical experience in laboratory work.

⁵ See *Matter of Lowe Brothers Co.*, 32 N. L. R. B. 369; *Matter of Mathieson Alkali Works*, 38 N. L. R. B. 1034; *Matter of Pittsburgh Plate Glass Company*, 53 N. L. R. B. 1181.

to separate representation apart from production and maintenance employees generally, has been recognized in numerous instances.⁶ We are of the opinion that the laboratory employees herein concerned may properly be separated from the production and maintenance group for the purposes of collective bargaining.

There remains for consideration the further contention of the A. F. L. to the effect that the laboratory employees should be included in an over-all unit of salaried employees. While the record discloses that salaried employees, including salaried laboratory employees, have certain common privileges and working conditions, there is nothing in the record to indicate that a question of representation has arisen with respect to the salaried employees as a group.⁷ Moreover, it is undisputed that laboratory employees perform work which is substantially different from that of stenographers and similar clerical employees comprising the greater part of the remaining salaried employees. We find that the laboratory employees as a group may properly constitute a separate unit apart from the other salaried employees, appropriate for the purposes of collective bargaining.⁸

Aside from the main issue with respect to the appropriate unit, there exists a dispute as to the inclusion or exclusion of specific groups of employees within the unit of laboratory employees hereinabove referred to; i. e., shift foremen, hourly paid employees of the laboratory division, and clerk typists.

Shift foremen. While all parties are agreeable to the inclusion of shift foremen, the evidence discloses that these individuals are in charge of the work of their respective shifts; that they have authority to discipline employees for the infraction of company rules; that notwithstanding the fact that it is not a part of their duties to make recommendations of wage increases for employees who work under them, shift foremen do, on occasion, make such recommendations which are given consideration by the chief chemist. The evidence further shows that in the absence of the chief chemist and the superintendent, shift foremen are expected to take whatever action they deem fit under the circumstances; that the shift foreman on the night shift in the chemical laboratory has no other person in authority over him and is generally responsible for doing whatever is necessary to maintain pro-

⁶ See *Matter of California Spray Chemical Corporation*, 54 N. L. R. B. 1366; *Matter of United States Rubber Company, Synthetic Rubber Division*, 56 N. L. R. B. 1328.

⁷ The A. F. L. has submitted a considerable number of cards in support of its alternative contention that the appropriate unit should include all salaried employees. However, the A. F. L. has filed no petition for a unit of salaried employees and merely states in its motion to intervene that it represents approximately 6,500 employees of the Company and also represents a majority of the employees in the unit concerning which the C. I. O. has filed a petition. There is no evidence that the A. F. L. has demanded or been refused recognition by the Company as bargaining representative for the salaried employees as a group.

⁸ See footnote 6, *supra*.

duction in the laboratory; and that shift foremen rotate from one shift to another with the result that every third week each shift foreman is in charge of the night shift. Upon all the evidence we are of the opinion and find that the shift foremen in question exercise substantial supervisory authority and are supervisory employees within the meaning of our usual definition. Accordingly, we shall exclude shift foremen from the unit hereinafter found appropriate.

Hourly paid employees of the laboratory division. The hourly paid employees in the laboratory division comprise three laboratory helpers, two drillmen, one handyman, and one sampler. Of the three laboratory helpers attached to the research laboratory, one has charge of the dark room and the mixing of photographic solutions. The other two are women who, in addition to performing routine laboratory work, go into the plant to take temperatures and also help the photographer. The drillmen, attached to the chemical laboratory, assist in the preparation of samples for analysis by the chemical operators. The handyman in the research section does janitor work and also helps in putting in and taking out of acid, slabs of metal used for testing purposes. The sampler procures samples of raw materials or finished products from various places in the plant for subsequent analysis by the chemical operators. While the A. F. L. opposes the inclusion of hourly paid employees of the laboratory division upon the ground that such employees are at present included under the contract between the Company and the A. F. L. covering hourly production and incentive employees, the objection is of diminishing importance due to the fact that the contract will shortly expire, leaving the employees in question full liberty of action to participate in the selection of a bargaining representative. In view of the similarity of duties and in spite of the unskilled nature of their work, we are of the opinion that the interests of the hourly paid employees of the laboratory division are more closely related to those of the more skilled laboratory employees than to those of any other group of employees. We shall, therefore, include the hourly paid employees of the laboratory division within the unit hereinafter found appropriate.⁹

Clerk typists. The employees in this category, while attached to the laboratory division, perform the usual duties of such employees, including the keeping of files and records. There is, however, nothing to indicate that they are charged with the duty of filing various data with respect to experiments conducted by the technical staff or that their work is so closely related to the actual performance of the laboratory work that the work of one cannot be separated from that of the other. Under the circumstances, we find that the employees

⁹ See *Matter of United States Rubber Company, Synthetic Division*, 56 N L R B 1328.

referred to as clerk typists are little more than record or file clerks without technical or laboratory duties such as distinguish the employees in the laboratory unit. We shall, accordingly, exclude them from the unit hereinafter found appropriate.

We find that employees in the Company's laboratory division, including employees in the classifications of research assistants, pyrometrists, pyrometrists' helpers, assistant pyrometrists, chemical operators, chemists' assistants, laboratory helpers, drillmen, handyman, and sampler, but excluding the superintendent, the assistant superintendent, the chief chemist, the secretary to the superintendent, the clerk typists, the shift 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, 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 The Midvale Company, Philadelphia, 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 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 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 the 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 Federation of Architects, Engineers, Chemists and Technicians, affiliated with the Congress of Industrial Organizations, or by Federal Labor Union No. 1887, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.