

In the Matter of UNITED CHEMICAL & ORGANIC PRODUCTS DIVISION
AND CENTRAL CHEMICAL DIVISION OF WILSON & Co., INC. and INTER-
NATIONAL CHEMICAL WORKERS UNION, LOCAL 157, A. F. OF L.

Case No. 13-R-2927.—Decided August 6, 1945

Mr. M. R. Swanson, of Chicago, Ill., for the Company..

Mr. H. J. Paar, of Waterloo, Iowa, for the A. F. L.

Miss Ruth E. Blicfield, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Chemical Workers Union, Local 157, A. F. of L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of United Chemical & Organic Products Division and Central Chemical Division of Wilson & Co., Inc., Calumet City, Illinois,¹ herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman J. DeKoven, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 2 and 3, 1945. The Company and 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.² 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:

¹ The name of the Company appears in the caption and the body of the Decision as it was amended at the hearing

² Both the Oil Workers International Union, C. I. O., and the United Gas, Coke and Chemical Workers, C. I. O., signed separate waivers and disclaimers of interest in the proceeding which were introduced into evidence.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

United Chemical & Organic Products Division, hereinafter called United, and Central Chemical Division, hereinafter called Central, which are located on adjoining tracts of land at Calumet City, Illinois, are divisions of Wilson & Co., Inc., a Delaware corporation with its principal office and place of business at 4100 South Ashland Avenue, Chicago, Illinois. United is engaged in the manufacture and sale of edible, technical, and photographic gelatin, di-calcium phosphate, edible bone, grease, and tallow, protein tankage, and bone meal. Central is engaged in the manufacture and sale of sulfuric, muriatic, nitric, and mixed acids, and salt cake.

The Company has, during the past 12 months, purchased raw materials, valued in excess of \$300,000, for its operations at United, and raw materials, valued in excess of \$200,000; for its operations at Central. More than 85 percent of these raw materials originated from points outside the State of Illinois. During the same period, the finished products manufactured at United amounted to over \$300,000 in value, and the finished products manufactured at Central amounted to over \$200,000 in value. Approximately 85 percent of these finished products was shipped to points outside the State.

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

II. THE ORGANIZATION INVOLVED

International Chemical Workers Union, Local 157, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In a letter to the Company dated March 2, 1945, the A. F. L. requested recognition as the exclusive bargaining representative of certain of the Company's employees at the plants involved herein. At the hearing the Company stated that it would not recognize the A. F. L. as the exclusive bargaining representative until it 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 A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.³

³ The Field Examiner reported that the A. F. L. submitted 197 authorization cards; that these cards were dated as follows: 6 in December 1944, 129 in January 1945, 3 in February 1945, 2 in March 1945, and 57 were undated; and that there are approximately 239 employees in the unit petitioned for.

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 A. F. L. seeks a unit of all production and maintenance employees⁴ at United and Central, including laboratory employees, the storeroom clerk, watchmen, belt foremen, and the wheel foreman, but excluding office clerical employees, the chauffeur, storekeeper, chief chemist, assistant chief chemist, bacteriologist, the employees at Central depot located at Chicago, Illinois, chief engineer, master mechanic, general foremen, assistant foremen, foremen, plant manager, assistant to the plant manager, superintendent, and all other supervisory employees. The Company disagrees with the unit sought in that it would limit the unit to hourly paid production and maintenance employees of both divisions and would exclude, in addition to the classifications the Union seeks to exclude, the laboratory employees, belt foremen, wheel foreman, storeroom clerk, and watchmen.

With respect to the Company's contention that the unit should be described as consisting of "all hourly paid production and maintenance employees," it is well established that the Board, in determining the appropriateness of a unit, will not distinguish between employees solely on the basis of the difference in mode of payment, but will look to their general interests, duties, nature of work, and working conditions. Since, as appears below, we are of the opinion that some of the salaried employees have similar interests and duties to hourly paid production and maintenance employees and are therefore properly includable in the same unit, we shall describe the unit without any reference to the mode of payment.⁵

Disputed Categories

Laboratory employees: The Company has a main laboratory which is located in a one-story building and is separated from the nearest factory building by a distance of approximately 75 feet, and a smaller laboratory which is located inside the factory building of United. These laboratories service both United and Central. The laboratory staff consists of a chief chemist and an assistant chief chemist, whom the parties agreed to exclude as supervisory employees, a bacteriologist, whom the parties also would exclude, and those employees hereinafter collectively referred to as the laboratory employees, consisting

⁴ This includes the gardener, yardman, and janitress.

⁵ See *Matter of Jones & Laughlin Steel Corporation, Pittsburgh Works*, 57 N. L. R. B. 357; *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778, *Matter of E. I. du Pont de Nemours and Company*, 62 N. L. R. B. 146

of a chemist, two assistant chemists, five laboratory assistants,⁶ and two research assistants. All except the two research assistants are housed in the main laboratory, the latter being the only ones assigned to the smaller laboratory at United. All the laboratory employees are responsible to the chief chemist, are on the administrative pay roll, are salaried, and have the same vacation and sick leave as other salaried employees. The earnings of these employees are, however, comparable to those of the production and maintenance employees.

The work in the main laboratory consists principally of testing raw materials and finished products to determine their chemical composition in order to insure that the materials and products meet the required specifications. The laboratory at United is in the nature of a "pilot plant" in which experimentation for the purpose of improving plant processes is carried on by the two research assistants. The duties of all the laboratory employees, including the two research assistants, are similar in nature and are almost entirely of a routine character. None of these employees carries on research as such but may conduct tests under the direction of the chief chemist or assistant chief chemist in aid of the research being carried on by them.⁷ While the tests conducted by the laboratory employees may disclose possible errors in workmanship of the production employees, the laboratory employees are responsible only for reporting the results of the tests to the chief and assistant chief chemists and make no recommendations with respect thereto; any instructions concerning corrections come from the chief or assistant chief chemists.

The chemist is the only employee in the main laboratory who has a college degree in chemistry. However, approximately 95 percent of his time is spent in making routine tests and about 5 percent in making analyses which require special skill or training. In addition to his duties as chemist, he does first-aid work. The two assistant chemists had some technical training prior to being employed by the Company, but they, along with the other employees in the laboratory, have been trained during their employment with the Company for their particular work.

⁶ One of the laboratory assistants, Jonas Anspa, while classified as a laboratory assistant, is regarded by the Company as an apprentice bacteriologist. His work, though technical, is largely of a routine nature, and all his experience and training has been received during his employment with the Company. His salary, although higher than that of the other laboratory assistants, is equal to that of the assistant chemists. Since his work is comparable to that of the assistant chemists and laboratory assistants, we shall not distinguish between him and the other employees included in the group of laboratory employees.

It was agreed that Barbara Moore, who had the classification of laboratory assistant, should be excluded from the unit as a clerical employee in view of the fact that more than 90 percent of her work is of a stenographic nature. The Company also agreed to change her classification to that of stenographer.

⁷ With particular reference to the research assistants the record discloses that the experiments are planned and directed by the chief and assistant chief chemists, but are carried out by the research assistants. This work is mostly routine, the only requirement being that these employees be capable of observing and reporting results correctly.

With the exception of the two research assistants, the laboratory employees come in contact with the production and maintenance employees when the production employees either bring samples into the main laboratory for testing or come there for information. The two research assistants occasionally conduct experiments during which they utilize the entire facilities of the plant and may direct the production workers in the course of these experiments. It does not appear, however, that such direction is of a supervisory nature. While the Company contended that these, as well as other employees in the laboratory, have access to confidential material and formulae, these matters have no relation to issues properly the subject of collective bargaining.⁸ On the basis of all the foregoing facts and circumstances, and in view of the fact that the work of these employees is closely integrated with that of the production and maintenance employees,⁹ we shall include the laboratory employees in the appropriate unit.¹⁰

Belt foremen: The Company employs 4 belt foremen in the cook room at United. The cook room is composed of 7 departments, all of which are under the supervision of a foreman. In addition to the foreman there are 5 assistant foremen in the cook room, all of whom the parties agreed to exclude as supervisory employees. The belt foremen are located in the "gelatine cut spread and tunnels" department of the cook room. About 40 employees work in the latter department. Prior to the commencement of organizational activities by the A. F. L., belt foremen were classified as "lead operators" and were paid on an hourly basis. However, the Company, upon learning of the organizational activities of the A. F. L., changed the classification of these employees to belt foremen and put them on the administrative pay roll for the asserted reason that it desired to clarify their status as supervisory employees. Although the belt foremen are now paid on a salary basis, their earnings are substantially the same as before, since they still receive approximately \$9 a week more than the production employees in the department. There was no change in function or duties of these employees at the time of the change in classification. Approximately 60 percent of the belt foreman's working time is spent in directing the work of the employees under him, the other 40 percent being spent in the regulation of the valves which control the flow of gelatin onto belts. Although the manager testified that each belt foreman has from 10 to 15 employees under his direction, and that they have the authority to recommend the hiring,

⁸ See *Matter of General Motors Corporation, Chevrolet Motors Division*, 53 N. L. R. B. 1096.

⁹ This is particularly true in the instant case in view of the nature of the Company's business.

¹⁰ See *Matter of Pittsburgh Plate Glass Company*, 54 N. L. R. B. 118; *Matter of National Lock Company*, 61 N. L. R. B. 1366.

discharging, or disciplining of employees, he had no knowledge of any instance in which a belt foreman had exercised such authority, and also added that, while he presumed that the belt foremen had been instructed as to their authority in this respect, he had no direct knowledge thereof.¹¹ On the other hand, the president of the A. F. L., who is also an employee of the Company, testified that the duties of the belt foremen were comparable to those of the tower man, who the parties agree should be included in the unit, in that the tower man is responsible for the operations of from 10 to 15 employees. We are of the opinion that the Company's contention that the belt foremen can recommend hiring, discharging, and disciplining of employees is refuted by the lack of evidence as to any instances in which any belt foremen have made such recommendations and the lack of knowledge on the part of the plant manager as to whether or not these employees have ever been notified of their authority. On all the facts, and in the absence of substantial and credible evidence that the belt foremen exercise supervisory functions, we find that the belt foremen are not supervisory employees. We shall include them within the appropriate unit.¹²

Wheel foreman: The wheel foreman is employed in the cook room at United and is under the supervision of the cook room foreman. There are five men in the wheel foreman's section, all of whom are responsible for the operation of certain wheels in the production process. The wheel foreman transmits to the men in the section the instructions of the cook room foremen. Approximately 90 percent of his time is spent in manual labor. During 3 months of the year, when the wheels are not in actual operation, he does repair work only, working without any assistance for the greater part of this period. The wheel foreman was on the hourly pay roll until January 1945, the time of the commencement of organizational activity by the A. F. L., when the Company transferred him to the administrative pay roll allegedly in order to clarify his status. There was no substantial change in his earning at the time, the wheel foreman receiving approximately \$5.40 a week more, on the basis of a 40-hour week, than the other employees in the section. Although the plant manager testified that the wheel foreman had the authority effectively to recommend the hiring, discharging, or disciplining of employees, he had no knowledge of any case in which the authority had been exercised, nor did he know whether or not the Company had ever instructed the wheel foreman as to his supervisory authority. An employee of the Company who had at one time worked with the wheel foreman, testified that the men in the section would not consult the

¹¹ The plant manager testified that he had been plant manager of Central since 1926, and of both plants since 1935.

¹² See *Matter of Hoosier Crown Corporation*, 51 N. L. R. B. 1353.

wheel foreman on any matters pertaining to the terms and conditions of employment, such as wage increases, transfers, or obtaining permission to leave the plant, but only as to the operation of the wheels since he was the senior employee in the section. In the absence of substantial and credible evidence that the wheel foreman exercises supervisory functions, and in view of the acknowledged fact that he does repair work during 3 months of the year, and the evidence that he is not considered a supervisor by the other employees in his section, we find that the wheel foreman is not a supervisor within the Board's definition of that term. We shall therefore include him in the appropriate unit.

Storeroom clerk: The storeroom clerk is employed in the Company's storeroom located in the administrative building, which also houses the Company's offices. The major portion of his time, approximately 60 percent, is spent in clerical work, such as maintaining an inventory of raw materials, checking supplies and materials received against the billings, and making entries on the pay roll for bond deductions. The storeroom clerk works under the supervision of the storekeeper, who is excluded from the unit by agreement of the parties. The storeroom clerk replaces the storekeeper when the latter is absent, and at those times makes local purchases of materials. He spends approximately 40 percent of his time acting as counterman, handing out tools and materials to production employees. He performs his clerical work at a desk in the main office near the desk of the storekeeper. Since it appears that the duties of the storeroom clerk are primarily clerical in nature, since he performs all of his work in the administrative building, and inasmuch as the major portion of his time is spent apart from the production and maintenance employees, we find that his interests are more closely allied with those of the office clerical employees than the production and maintenance employees. We shall therefore exclude him from the unit.

Watchmen: The Company employs six watchmen at United and one at Central, all of whom perform substantially the same duties. None of the watchmen is armed, uniformed, or militarized. The duties of the watchmen on the night shift are to watch the time clock office, where the employees punch in and out, and to maintain a watch service by making regular rounds of the plant and "punching clocks" on the route at stated intervals. One of the employees on the day shift watches the time clock office, and the other is on duty at a railroad crossing adjacent to one of the plants where he checks trucks going in and out of the plant as they cross the railroad. Watchmen are hourly paid, receive the same vacation and sick leave as do the production and maintenance employees, and are under the supervision of the superintendent who is in charge of production. The average age of these employees is about 60 years; and for the most part they are former

production or maintenance employees who have been placed as watchmen pursuant to the Company's policy of giving these positions to employees who are physically incapable of performing their regular work at the plant. Since these employees perform the duties of ordinary watchmen involving no monitorial functions, we shall include them within the appropriate unit.¹³

We find that all production and maintenance employees of the Company at its United and Central plants in Calumet City, Illinois, including laboratory employees, belt foremen, the wheel forman, and watchmen, but excluding office clerical employees, the storeroom clerk, chauffeur, storekeeper, chief chemist, assistant chief chemist, bacteriologist, employees at Central's depot located at Chicago, Illinois,¹⁴ chief engineer, master mechanic, general foremen, assistant foremen, foremen, the plant manager, assistant to the plant manager, superintendent, and any other 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.¹⁵

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 United Chemical & Organic Products Division and Central Chemical Division of Wilson & Co., Inc., Calumet City, Illinois, an election by secret ballot shall be

¹³ See *Matter of Champion Sheet Metal Company, Inc.*, 61 N. L. R. B. 511, see also *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421.

¹⁴ In connection with its operations at Central, the Company maintains a depot at Chicago, Illinois, about 28 miles distant. Central delivers carloads of acid to storage tanks at the depot and from there the acid is drawn in carboys for delivery to customers in Chicago. It is apparent that the employees at the depot have different interests and duties from those at the plants in Calumet City. We shall exclude them in accordance with the agreement of the parties.

¹⁵ The A. F. L.'s request to appear on the ballot as International Chemical Workers Union, Local No. 157, A. F. of L. is hereby left to the discretion of the Regional Director.

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 Thirteenth 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 or not they desire to be represented by International Chemical Workers Union, Local 157, A. F. of L., for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.