

In the Matter of WESTVACO CHLORINE PRODUCTS CORPORATION and  
FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS AND TECHNICIANS,  
CHAPTER 25, C. I. O.

In the Matter of WESTVACO CHLORINE PRODUCTS CORPORATION and  
PROFESSIONAL SCIENTISTS OF INDUSTRY

*Cases Nos. 20-R-1352 and 20-R-1368, respectively.—Decided  
August 31, 1945*

*Little, Coakley & Lauritzen, by Mr. John B. Lauritzen, of San  
Francisco, Calif., for the Company.*

*Gladstein, Grossman, Sawyer & Edises, by Mr. Bertram Edises, of  
Oakland, Calif., for the FAECT.*

*Mr. S. M. Cimino, of Palo Alto, Calif., for the PSI.*

*Mr. Sol Davison, of San Francisco, Calif., for the Chemical Workers  
and Office Employees.*

*Mr. Bernard Goldberg, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Federation of Architects, Engineers, Chemists and Technicians, Chapter 25, C. I. O., herein called the FAECT, and Professional Scientists of Industry, unaffiliated, herein called the PSI, alleging that questions affecting commerce had arisen concerning the representation of employees of Westvaco Chlorine Products Corporation, Newark, California, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Robert E. Tillman, Trial Examiner. Said hearing was held at San Francisco, California, on May 22, 23, 24, 28, and 29, 1945. The Company, the FAECT, the PSI, International Chemical Workers Union, Local 62, A. F. L., herein called the Chemical Workers, and Office Employees International Union, Local 29, A. F. L., herein called the Office

Employees, appeared and participated.<sup>1</sup> 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

Westvaco Chlorine Products Corporation, a Delaware corporation having its principal office in New York City, operates a number of plants for the manufacture of heavy chemicals throughout the United States, including the plant at Newark, California, which is the subject of this proceeding. During 1944, the Company's gross sales at its Newark plant aggregated more than \$1,500,000, of which in excess of 75 percent represents sales to customers located outside the State of California. During the same period, the Company used at this plant for manufacturing purposes raw materials valued at more than \$500,000, of which in excess of 20 percent was shipped to the plant from points outside the State.

The Company admits, for the purpose of this proceeding, 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, Chapter 25, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Professional Scientists of Industry, unaffiliated, is a labor organization admitting to membership employees of the Company.

International Chemical Workers Union, Local 62, and Office Employees International Union, Local 29, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

<sup>1</sup> Prior to the hearing United Office and Professional Workers of America, Local 34, C. I. O., filed a written motion to intervene alleging that various office workers employed by the Company had expressed a desire to be represented by it for collective bargaining purposes and that a unit of office and clerical employees was appropriate. However, the union made no appearance at the hearing and submitted no evidence that it represented any of the employees in the units hereinafter found to be appropriate. Accordingly, the Trial Examiner correctly found it unnecessary to rule on the written motion to intervene.

## III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to recognize any of the unions involved herein as the collective bargaining representative for any of the employees who are the subject of this proceeding because of the conflicting claims to representation made upon it.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the FAECT and the PSI each represents a substantial number of employees in the units claimed by each to be appropriate.<sup>2</sup>

We find that questions affecting commerce have 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 UNITS; THE DETERMINATION OF REPRESENTATIVES

*Position of Parties*

The FAECT has petitioned for a single unit to include all professional, technical, clerical and secretarial employees in the process control department, the research department, the engineering department, and the control laboratory, excluding the janitor and supervisors. The PSI seeks a unit confined to professional employees exclusively, while the Chemical Workers desires a technicians' unit, and the Office Employees an office and clerical employees' unit. The Company joins with the latter unions in urging that three separate units be established, to comprise respectively, professional employees, technical employees, and office and clerical employees.

*Technical and professional employees:* Insofar as the FAECT seeks to include professional employees in the same unit with technicians, the Board has frequently held that, because of their educational background, work, responsibilities, and interests, professional employees constitute a distinctive group who may function effectively for collective bargaining purposes either as separate unit or as part of a technical and professional unit, depending on their own desires as ex-

<sup>2</sup> The Field Examiner reported that the FAECT submitted application cards signed by 20 of the 34 employees in the unit proposed by it, and that the PSI submitted designations signed by 10 of the 14 employees in the unit suggested by it. Since these proposed units overlap, all 10 of the designations submitted by the PSI contained the names of employees also included in the FAECT proposed unit, while 3 of the application cards submitted by the FAECT were signed by employees also included in the PSI proposed unit.

At the hearing, the Trial Examiner further reported that the Chemical Workers submitted application cards signed by 2 of the employees in the technicians unit, hereinafter found appropriate, and that the Office Employees submitted designation cards signed by 6 of the 35 employees in the office and clerical unit, hereinafter found appropriate, and that the application cards submitted by the FAECT contained the names of 3 employees in the latter unit.

The Chemical Workers also relies on the fact that it is at present the collective bargaining representative of the Company's production and maintenance employees.

pressed in an election.<sup>3</sup> Accordingly, we shall make no final determination at this time with respect to a unit of technical and/or professional employees but shall delay such determination pending the outcome of the elections ordered hereinafter. In the event that both the professional and technical employees voting separately, select the same union, they shall together constitute a single appropriate unit.

Some question exists as to the status of three chemists employed in the control laboratory. The Company asserts that all three are professional employees. The PSI considers two of the three chemists who have college degrees as definitely professional. It is uncertain as to the professional status of the third chemist who, while without a college degree, has had 3 years of pre-medical training, 1½ years of schooling at a university, and 2½ years of experience in the plant laboratory. The Company considers this chemist, because of his educational background, experience, and ability, to be the equivalent of any of the other chemists with college degrees. The FAECT apparently contends that all three chemists are merely technicians. Although much of their work is routine and similar to that performed by junior chemists who are considered to be technicians, the chemists perform more diversified tasks than those of the junior chemists. Significantly, too, the chemists, unlike the junior chemists, are considered to be trainees for more important positions elsewhere in the plant. Under all the circumstances we are of the opinion that the chemists, including the non-graduate chemist, are professional employees, and we shall include them as such in the voting group of professional employees.<sup>4</sup>

*Office and clerical employees:* No opposition has been expressed to the establishment of an office and clerical unit as desired by the Office Employees. We shall, therefore, in accord with our practice, establish such employees in a separate unit.<sup>5</sup> The only question that remains to be resolved is whether the secretarial and clerical employees in the technical departments should be included in the same unit with technical employees, as desired by the FAECT, or should be a part of the office and clerical unit, as urged by the Company and the Office Employees.

The clerical help in the technical departments neither have nor are required to have technical training. They perform purely cler-

<sup>3</sup> *Matter of Aluminum Company of America*, 62 N. L. R. B. 318, and 61 N. L. R. B. 1066; *Matter of Radio Corporation of America*, 57 N. L. R. B. 1729, *Matter of General Electric Company*, 57 N. L. R. B. 81; *Matter of Monsanto Chemical Company*, 53 N. L. R. B. 1283, *Matter of Shell Development Company, Inc.*, 38 N. L. R. B. 192; cf. *Matter of Curtiss-Wright Corporation*, 63 N. L. R. B. 207.

<sup>4</sup> Of the junior chemists, two are former housewives without experience who obtained their college degrees more than 25 years ago and were hired because of the present shortage of professional help. The third junior chemist also attended college, majoring in home economics; she qualified for her present position by taking a war training course at Stanford University. These junior chemists are not regarded as trainees for better positions elsewhere in the plant.

<sup>5</sup> See *Matter of Aluminum Company of America*, *supra*; *Matter of Spicer Manufacturing Corporation*, 55 N. L. R. B. 1491.

ical work. The secretaries take dictation, type reports, and do some filing. Several of them have been transferred to the technical departments from the general office, a recent high school graduate, with no experience in a chemical plant, was appointed directly to her present position as secretary to the head of the control laboratory. The clerk in the engineering department, the only non-secretarial clerical employee desired to be included by the FAECT, likewise has no technical training and performs such routine clerical work as maintaining records and files, operating a blueprint machine, filling out forms for gas rations, and writing out requisitions. Although these clerical employees in the technical departments are under the immediate supervision of the heads of the respective departments where they are employed, the office manager exercises indirect control by having the final decision in the hiring of, setting of wage rates for, and granting wage increases to, all clerical employees wherever situated in the plant. In view of the foregoing, we are of the opinion that the secretaries and clerks in the technical departments have a greater community of interest with the balance of the office and clerical workers in the plant than with the technicians. Accordingly, we shall include them in the office and clerical unit.

We find that all office and clerical employees of the Company at its Newark, California, plant, including secretaries, stenographers, and clerks in the process control department, research department, engineering department and control laboratory, but 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We shall direct that three separate elections by secret ballot be held among the employees in the unit found appropriate above and in the voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

(1) All professional employees at the Company's Newark, California, plant, including chemical engineers in the process control department, research chemical engineers, research chemists, research physical chemists, and research analytical chemists in the research department, mechanical engineer in the engineering department, and chemists in the control laboratory, but excluding all employees in voting group (2) below, office and clerical employees, and all supervisory employees with authority to hire, promote, discharge, disci-

pline, or otherwise effect changes in the status of employees or effectively recommend such action;

(2) All technicians employed at the Company's Newark, California, plant, including research technicians in the research department, draftsmen in the engineering department, and junior chemists, technicians, junior laboratory technicians, and sample men in the control laboratory, but excluding all employees included in voting group (1) above, office and clerical employees, janitors, chief chemist and assistant chief chemist in the control laboratory, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

As stated above, there will be no final determination of the appropriate technical and/or professional units pending the results of the elections.

### DIRECTION OF ELECTIONS

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 Westvaco Chlorine Products Corporation, Newark, California, separate elections 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 Twentieth 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 appropriate unit and the voting groups described 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 elections, to determine (a) in the office and clerical unit whether or not they desire to be represented by Office Employees International Union, Local 29, A. F. L.<sup>6</sup> (b) in the

<sup>6</sup> The FAECT indicated at the hearing that it did not desire to participate in any election in the office and clerical employees unit.

professional voting group whether they desire to be represented by Federation of Architects, Engineers, Chemists and Technicians, Chapter 25, C. I. O., or by Professional Scientists of Industry, or by neither, and (c) in the technicians voting group whether they desire to be represented by Federation of Architects, Engineers, Chemists and Technicians, Chapter 25, C. I. O., or by International Chemical Workers Union, Local 62, A. F. L., or by neither, for the purposes of collective bargaining.