

In the Matter of GENERAL CHEMICAL COMPANY and INTERNATIONAL
CHEMICAL WORKERS UNION, LOCAL 25, A. F. OF L.

Cases Nos. 20-R-1360 and 20-R-1390.—Decided October 19, 1945

Pillsbury, Madison & Sutro, by Messrs. Marshall P. Madison and Melvin E. Menser, of San Francisco, Calif., and Mr. L. C. Snyder, of Port Chicago, Calif., for the Company.

Messrs. Harvey E. Howard, O. L. Farr, Stanley A. McMillan, C. C. Rector, Arthur Franceschi, Francis W. Kenney, of Port Chicago, Calif., for the Union.

Mr. Herman Goldberg, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by International Chemical Workers Union, Local 25, A. F. of L., herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of General Chemical Company, Nichols, 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. The hearing was called at San Francisco, California, on June 28, 1945. The Company and the Union appeared and participated and 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 filed briefs which have been considered by the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Chemical Company, a New York Corporation, has its principal office in New York City. The only plant concerned in this pro-
64 N. L. R. B., No. 66.

ceeding is located at Nichols, California, where the Company is engaged in the manufacture of chemical products. During the year 1944, the Company manufactured at its Nichols, California, plant, finished products having a value in excess of \$100,000, of which more than 10 percent was shipped to points outside the State of California. During the same period, raw materials having a value in excess of \$100,000 were used at the Nichols plant, of which more than 25 percent was shipped to the plant from points outside the State of California.

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

II. THE ORGANIZATION INVOLVED

International Chemical Workers Union, Local 25, A. F. of L., is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On March 27, 1945, the Union made an oral request of the Company for recognition as the collective bargaining representative of the Company's laboratory employees. At a joint conference held in the Regional Office of the Board on May 3, 1945, the Union made a similar request with respect to the Company's plant-protection personnel. In both instances, the Company suggested that the Union follow the procedure provided by the National Labor Relations Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the units found herein to be appropriate.¹

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 Union seeks the following units: (1) all plant-protection personnel of the Company, including the relief-plant-protection employee;² and (2) all laboratory employees of the Company, including the assistant chief chemist, the senior control chemists, the junior analyst, the junior laboratory assistants, and the junior draftsman, but excluding the chief chemist. The Company opposes the establishment of such units for reasons hereinafter discussed.

¹ The Field Examiner reported that in the plant-protection unit in which there were four employees the Union submitted three application-for-membership cards; and that in the laboratory unit in which there were seven employees the Union submitted six application-for-membership cards.

² These employees are classified by the Company as "watchmen."

The plant-protection unit

The Company has in its employ two full-time salaried plant-protection employees, one full-time hourly paid plant-protection employee, and one part-time relief, hourly paid plant-protection employee. One salaried plant-protection employee and the full-time hourly paid plant-protection employee work from 4:00 p. m. to 12:00 p. m. The other salaried plant-protection employee works from 12:00 p. m. to 8:00 a. m., and the part-time employee works 3 days a week relieving the other plant-protection personnel and 3 days a week in production. These employees have a small office adjacent to the main office, and they are responsible to the works accountant. Their main duties consist of patrolling the premises and performing monitorial functions.³

As to their monitorial duties, the record discloses that when making their hourly rounds they see to it that the production employees are on the job and that safety measures are being observed. Inasmuch as there are no foremen or other supervisors during the night shifts, they are authorized to warn production employees found asleep or engaging in other infractions of plant rules and to send them home for drunkenness and for insubordination. After having been warned of infractions of plant rules if employees continue to engage in such violations, it is the duty of plant-protection employees to turn in a report to the works accountant which merely states the facts and includes no recommendations. Employees guilty of wrongdoing are reprimanded the next day by their immediate supervisor. Plant-protection employees have no power to hire or discharge. They are at present neither uniformed, armed, deputized, nor militarized.

The Company's contention that the salaried plant-protection employees, because of their purported relationship to management, are not employees within the meaning of the Act, has been previously considered by the Board in other cases involving employees with similar duties and status, and found to be without merit.⁴ Furthermore, it is clear that these employees are not supervisory or managerial personnel, for they merely have responsibilities which are monitorial in character.⁵ Insofar as the Company inferentially maintains that membership in a union, composed in part of production and maintenance employees,⁶ may interfere with the duty which the salaried

³ In addition to the above-mentioned duties, one of the employees on the 4:00 p. m. to 12:00 p. m. shift checks incoming and outgoing freight, as does the weighmaster who works on the first shift, and the employee on the 12:00 p. m. to 8:00 a. m. shift "takes care" of all production employees leaving the shift, checks time cards, and acts as first-aid man. Since there are no foremen or other supervisors during the night shifts, the production employees report anything amiss to the plant-protection employees who remedy the difficulty themselves, obtain repair mechanics or telephone the department foreman.

⁴ *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892, and cases cited therein.

⁵ *Matter of Bethlehem Steel Company*, *supra*.

⁶ The Union currently represents all production and maintenance employees of the Company's Nichols plant.

plant-protection employees owe to their employer, we do not agree that there is a necessary conflict between union membership and faithful performance of duty. The Board has repeatedly held that a union which represents other employees of an employer may also represent his plant-protection personnel in a separate unit.⁷

The Company adverts to its long bargaining history with the Union covering its hourly paid production and maintenance employees, including the hourly paid plant-protection employees, and contends that, for this reason, the Board should dismiss the petition in Case No. 20-R-1390 insofar as these hourly paid plant-protection employees are concerned. The record discloses that from 1938 until September 22, 1942, the Company has recognized the Union as the representative of its hourly paid production and maintenance employees, including the hourly paid plant-protection workers. On September 22, 1942, all the Company's plant-protection employees became auxiliary military police, and the Union agreed to exclude from the unit those hourly paid employees for the period of their military service. On January 3, 1944, all plant-protection employees were demilitarized. The Company contends that, as a result of the demilitarization of the hourly paid employees, they are presently part of the production and maintenance unit. We are not persuaded, however, that the asserted bargaining history justifies departure from our policy of segregating monitorial employees for collective bargaining purposes from other workers in relation to whom they are monitorial.⁸

Accordingly, since both the salaried and hourly paid plant-protection employees of the Company are monitorial in relation to the other employees of the Company, we are of the opinion that both groups constitute a single appropriate unit.⁹

We find that all plant-protection employees of the Nichols, California, plant of the Company, including the relief plant-protection employees,¹⁰ 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.

The laboratory unit

As stated above, the principal business of the Company at the Nichols plant is the production of chemicals. In connection with its opera-

⁷ *Matter of Bethlehem Steel Company, supra.*

⁸ *Matter of Kelsey-Hayes Wheel Company*, 62 N L R B 421.

⁹ *Matter of Bethlehem Steel Company, supra*; and *Matter of Kelsey-Hayes Wheel Company, supra.*

¹⁰ This employee is included only with respect to his plant-protection work *Matter of Wadham's Division of Socony-Vacuum Oil Company*, 54 N L R B 1164. See *Matter of Swift and Company*, 58 N L R B 657

tions the Company has a small laboratory which is housed in its office building, where it engages the services of a chief chemist, an assistant chief chemist, two senior control chemists, a junior analyst, and two junior laboratory assistants. All, with the exception of the two junior laboratory assistants, attended college and specialized in the study of chemistry; the two junior laboratory assistants have had a high school education. The laboratory constitutes the Company's chemical control division. As such, it is under the administrative control of certain officials of that division both in San Francisco and in New York City. It is also under the supervision of the works superintendent at the Nichols plant and under the immediate supervision of the chief chemist. The laboratory's principal function is the control of quality of raw materials and finished products. This involves inspecting the operation of plant processes and the testing and analyzing of materials during every stage of production. With the exception of the chief chemist, who mainly acts in an administrative capacity to keep the unit functioning, all the laboratory employees are engaged in analytical and control work. In this connection, it is their duty to see to it that optimum operating conditions prevail and to report any irregularities to the production foreman. When the production foreman cannot be reached they instruct the operator how to act to remedy the situation. To a minor degree they engage in some development work to improve products or processes pertinent to the plant's operations. In the course of their duties all these employees have access to secret processes and production records which are not available to the ordinary production worker. At times certain of these laboratory workers have met with management to discuss technical aspects of the business. All the laboratory employees have executed "patent agreements" with the Company.

The basis of the Company's contention, set forth in its brief, that all the laboratory employees are supervisory employees and hence are not employees within the meaning of the Act, is that they are acquainted with the Company's secret processes; that they tell production employees to correct irregularities in production; that they have executed patent agreements with the Company; and that certain of them meet regularly with management and discuss technical aspects of the business. We agree that the laboratory employees may possess information of a confidential nature, but this information does not concern labor relations. Nor does it appear in the record that the matters discussed between certain of the laboratory employees and management directly pertain to labor relations. While to some extent the laboratory employees direct the work of the production employees and report irregularities to their foreman, they have no direct supervision over either the foremen or the production workers. It is clear that they are not supervisory employees in the accepted sense, but

merely technical experts of a type frequently included in bargaining units.¹¹ Accordingly, we find that the laboratory employees of the Company may constitute an appropriate unit.

There remains the problem as to whether or not the assistant chief chemist, the junior analyst, and the draftsman should be included or excluded from the unit.

Assistant Chief Chemist: This individual is in complete charge of the laboratory in the absence of the chief chemist, who is away on the average of 1½ days a week. There is general testimony that on such occasions he has the same authority as the chief. He acts largely on instructions prepared by the chief chemist, but also acts on his own initiative. When the chief chemist is present, the assistant chief is engaged in independent work on special tests and investigations which require his presence in the plant proper about 90 percent of his time. In this work, he has no assistants, or anyone under him. On the other hand, the chief chemist, when present, is engaged almost entirely in supervisory and administrative functions and seldom does any laboratory work. Employees in the laboratory go to the chief chemist when they desire time off or have a grievance. The assistant chief is paid less than one of the senior control chemists. He has the same vacation privileges as other laboratory employees. The chief chemist, who testified, was unable to estimate what percentage of the assistant chief's time was devoted to supervisory or administrative duties. The assistant chief does not regularly assign work.

Although it was testified that the assistant chief has power to recommend to the chief chemist hiring and discharging of employees, he has not in fact recommended hiring,¹² and has recommended discharging only once in the past 2 years.¹³ The assistant chief has never sent a laboratory employee home for disciplinary purposes. The last time he recommended a promotion or wage increase was 2 years ago. While the chief chemist is present, the assistant chief has the power to buy materials and sign requisitions; the record, however, does not disclose to what extent, if any, he has authority to make financial commitments on behalf of the Company.

It is plain that, because of the small size of the laboratory, the extent of the supervisory duties of the chief chemist, the well defined duties of other employees, and the fact that the assistant chief is in the laboratory only 10 percent of his time, the assistant chief devotes

¹¹ *Matter of Aluminum Company of America, et al*, 61 N L R B. 1066.

¹² The Company points to one incident which it considers as a recommendation. The chief chemist communicated with a high school and through his efforts obtained two girls to work on Saturday. Subsequently, the two girls were put on full-time work by the chief chemist after the junior analyst and the assistant chief chemist appraised their services and found them satisfactory.

¹³ That involved the case of a woman who was hired for special work and was discharged in less than a week after the assistant chief chemist reported to the chief chemist, who was absent most of that time, that she was not qualified for the job.

a relatively insignificant part of his day to supervisory functions. Moreover, the record discloses that the labor turn-over in the laboratory is slight, discipline is seldom exercised, and the assistant chief performs substantially the same work as other laboratory employees. We are of the opinion that the assistant chief is not of sufficient supervisory stature to warrant his exclusion from the unit.¹⁴

Junior Analyst: The Company appears to contend that this employee is a leader of certain employees and as such is more of a supervisory employee than others in the laboratory. The record indicates that she distributes work to the laboratory assistants. There is general testimony that she can recommend the hiring and discharging of such employees. However, no actual instance of such a recommendation could be cited by the Company's witnesses.¹⁵ Although it was testified that she can recommend wage increases, she has never done so. No one goes to her for time off. She is engaged about 90 percent of her time doing routine analytical work for various production departments, control work, and important testing. The other 10 percent of her work might be deemed research. She spends not more than 1 hour a day outside the laboratory. She and the two laboratory assistants, junior grade, unlike the other laboratory workers, receive overtime pay. It appears that final decisions respecting the status of employees are made by the chief chemist. Under all the circumstances we are of the opinion that the junior analyst is not a supervisory employee within the meaning of the Board's customary definition and we shall, therefore, include her in the unit.

Junior Draftsman: The Company has one draftsman, an hourly paid employee who is engaged in making drawings and blueprints of plant equipment and apparatus. He has a desk in an office adjacent to the laboratory. Prior to a recent fire, he shared an office with the plant engineer who is his supervisor. Since the Company has no other technical or professional employees outside of its laboratory, we shall include the junior draftsman in the unit, which will then comprise all the technical and professional employees of the Company.

We find that all laboratory employees of the Nichols, California, plant of the Company, including the assistant chief chemist, the senior control chemists, the junior analyst, the junior laboratory assistants, and the junior draftsman, but excluding the chief chemist, 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, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

¹⁴ *Matter of United States Smelting, Refining and Mining Company*, 53 N L R B 84.

¹⁵ See footnote 12, *supra*

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units 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.

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 General Chemical Company, Nichols, California, 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 units 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 any 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 whether or not they desire to be represented by International Chemical Workers Union, Local 25, A. F. of L., for the purpose of collective bargaining.

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