

In the Matter of PETER CAILLER KOHLER SWISS CHOCOLATES COMPANY, INC. and P. C. K. LABORATORY WORKERS UNION
(UNAFFILIATED)

Case No. 3-R-1081.—Decided March 4, 1946

Mr. H. Duane Bruce, of Syracuse, N. Y., for the Company.

Mr. Sidney H. Greenberg, of Syracuse, N. Y., for the Union.

Margaret H. Patterson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by P. C. K. Laboratory Workers Union (unaffiliated), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Peter Cailler Kohler Swiss Chocolates Company, Inc., Fulton, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgeson, Trial Examiner. The hearing was held at Fulton, New York, on October 11, 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

Peter Cailler Kohler Swiss Chocolates Company, Inc., is a New York corporation maintaining its principal office and plant at

66 N. L. R. B., No. 27.

Fulton, New York, where it is engaged in the production, manufacture, and sale of cocoas, coating and liquors, chocolate bars, chocolate syrups, fudge, and other products. For the calendar year 1944, the Company purchased raw materials valued in excess of \$13,000,000, of which approximately 70 percent was purchased from points outside the State of New York. For the same period, the Company sold, manufactured, and processed products exceeding in value \$25,000,000, in excess of 40 percent of which was sold and shipped to customers located outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

P. C. K. Laboratory Workers Union (unaffiliated) 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 the employees involved herein 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 requests a unit composed of all laboratory workers at the Company's plant including laboratory testers, raw material testers, special testers, laboratory clerks, sample clerk, laboratory helper, control analyst, research technicians, research chemists, and excluding tester supervisors, inspectors,² chief chemist, director of research, and all other supervisory employees. The Company objects to the inclusion of research chemists, research technicians, and special testers.

¹ The Field Examiner reported that the Union submitted 44 authorization cards. There are approximately 50 employees in the appropriate unit.

² Originally the Union petitioned for the inclusion of inspectors, but at the hearing it moved to amend its petition to provide for the exclusion of inspectors from the requested unit. The Company did not object to the motion, which was granted by the Trial Examiner.

The Company employs approximately 1165 employees, most of whom are engaged in production work scattered throughout some 50 buildings contiguously located. The laboratory is in one centrally located building, but the work of most laboratory employees is performed throughout the whole plant. Unlike the production and maintenance employees who are hourly paid,³ all laboratory employees are salaried employees and their vacation schedules differ from those of hourly employees. All laboratory employees are under the supervision of either the director of research or the chief chemist. The employees working under the director of research are concerned with the development of new products on a factory basis and the employees under the direction of the chief chemist are engaged primarily in control work, such as checking and testing manufacturing operations to increase output and improve quality. The director of research and the chief chemist are directly responsible to the vice president and general manager of the plant and together with the laboratory workers constitute the laboratory and technical staff of the Company.

Research technicians and research chemists: The Company presently employs five research technicians and one research chemist but plans to increase this number in the near future as qualified men again become available. The duties of these two types of employees are substantially the same except that the specialized training of the research chemist enables him to undertake more exacting scientific research than is expected of the research technicians. The Company's job description of a research chemist provides that he must be a graduate chemist or pharmacist. The Company requires that the research technicians have some college chemical training plus experience as a tester, or extensive experience in several production departments of the plant plus experience as a tester. Two of the research technicians and the research chemist presently in the Company's employ have Bachelor of Science degrees. The other three research technicians do not have college degrees but have had some technical training and were promoted from tester classifications. Their work differs materially from the comparatively routine work of testers and other laboratory workers. They conduct research in order to develop new processes, improve the quality of the Company's products, and to correct production difficulties in the factory.

The Company contends that the research technicians and the research chemist should be excluded from the requested unit on two grounds: first, that their work is of a supervisory character and second, that their training, social standing, general outlook, and the

³ The Company has a contract with an unaffiliated labor organization known as the P. C. K. Employees Union representing a unit of production and maintenance employees. This organization was served with notice of the hearing but did not intervene.

nature of their jobs render inappropriate their inclusion in the same bargaining unit with non-professional workers.

As to the Company's first ground for objection, the record reveals that the supervisory work of technicians and chemists is limited and of brief duration. It consists of directing the work of groups of production employees during the running of tests. Any supervisory duties so performed are incidental to the main purpose of their work which is to improve the quality of the Company's products, correct production difficulties, and develop new processes. The record contains no evidence to show that a technician or a chemist ever made effective recommendations affecting the status of other employees. We find that these employees are not supervisors within the meaning of our customary definition.

With respect to the Company's second ground for exclusion, the record reveals a clear line of demarcation between these professional employees and the other laboratory workers. While only three of the group of six are college graduates, the other three have, through courses of study and wide experience throughout the factory, equipped themselves to handle the same grade of experimentation and research as the college-trained men.⁴ The work of the employees in question calls for a wider scientific knowledge and training, however acquired, greater resourcefulness and imagination, and offers opportunities for advancement far beyond those open to the other laboratory workers.⁵ The Company has indicated that it intends to enlarge this particular group by hiring more college trained chemists now that the demobilization of the armed services is making such people available, and it will be possible for the Company to require a higher degree of training and skill than it could during the war years.

Under the circumstances, we shall exclude the research men from the unit. This decision will not preclude the Union from filing a petition, if it so desires, seeking to represent the research men in a separate unit.

Special Testers: The Company objects to the inclusion of the special tester on the ground that he is a supervisory employee. At present, the Company employs one special tester whose job is to inspect or check the work of other testers and to run blind tests. He is under the supervision of a supervisor of testers. He makes reports on the results of the tests but does not make recommendations with respect to testers whose work he checks. We find that his work is

⁴ See *Westvaco Chlorine Products Corporation*, 63 N. L. R. B. 763, wherein the Board decided that certain non-graduate chemists were professional employees and therefore included them in the same voting group with graduate chemists.

⁵ In this connection, we attach no controlling importance to the fact that the Company is known to have paid higher salaries to experienced but non-professionally trained testers than to newly hired professionally trained research technicians.

not supervisory in character and accordingly we shall include him in the unit.

We find that all laboratory employees including laboratory testers, raw material testers, special testers, laboratory clerks, sample clerks, laboratory helpers, control analysts, but excluding inspectors, research technicians, research chemists, tester supervisors, chief chemist, director of research, and all or 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 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 Peter Cailler Kohler Swiss Chocolates Company, Inc., Fulton, New York, 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 Third 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 P. C. K. Laboratory Workers Union (unaffiliated), for the purposes of collective bargaining.

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