

4. We find, in agreement with the parties, that all employees employed by the Employer in its dredging, construction, and repair work, excluding executives, office employees, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

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UNITED STATES METALS REFINING COMPANY *and* JAMES A. POTASH,  
PETITIONER. *Case No. 4-RD-54. March 14, 1951*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before E. Don Wilson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner, an employee of the Employer, asserts that the International Union of Mine, Mill & Smelter Workers Local 837, herein called the Intervenor, is no longer the representative under Section 9 (a) of the Act of the employees in the Employer's chemical laboratory. The Intervenor, a labor organization, is the certified and currently recognized bargaining representative of the employees involved.

3. The present contract between the Employer and the Intervenor was executed on November 1, 1950, and contains provisions applicable to the employees in the chemical laboratory. The Intervenor contends that the foregoing contract is a bar to an election at this time. We find no merit in this contention. As the petition was filed before the execution of the November 1, 1950, contract, we find that the contract is not a bar to this proceeding.<sup>1</sup>

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

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<sup>1</sup> *Stamford Wall Paper, Inc.*, 92 NLRB 1173.

The Petitioner seeks a decertification election in a unit consisting of all employees in the Employer's chemical laboratory, excluding all "hourly and supervisory employees." The Intervenor contends that in the light of past bargaining history, the existing plant-wide unit, including the chemical laboratory employees, is alone appropriate, and that the unit sought to be decertified is inappropriate. The Employer is engaged in the smelting and refining of copper ores, concentrates, blisters, and other copper materials at its plant located in Carteret, New Jersey, the only plant involved in this proceeding.

On November 5, 1945, the Board, pursuant to the agreement of the parties, found appropriate the following separate units of employees at the instant plant: (1) All hourly paid production and maintenance and clerical employees and (2) salaried employees in the chemical and metallurgical laboratories.<sup>2</sup> On December 18, 1945, the Intervenor was certified as representative of these units. A single contract covering the employees in both these units was executed by the Employer and the Intervenor on February 18, 1946, the contract expiring June 30, 1947. Another such "master contract" was executed on July 1, 1947, expiring June 30, 1948.

On July 1, 1948, the Employer and the Intervenor entered into a 1-year contract, divided into two parts as follows: (1) A main contract which recognized the Intervenor as the exclusive representative of all the employees in the units described above, including the employees in the chemical and metallurgical laboratories, and contained substantive provisions applicable to all such employees, and (2) a supplemental contract containing special provisions applicable only to the employees in the chemical and metallurgical laboratories.

On October 27, 1949, the Employer and Intervenor executed another 1-year contract in two parts, patterned after the 1948 contract. However, the Intervenor while continuing to represent the chemical laboratory employees waived all rights to act as bargaining representative for the *metallurgical* laboratory employees under this and subsequent contracts. The chemical laboratory employees, however, were covered by both parts of the 1949 contract, as in the case of the 1948 contract. The November 1, 1950, contract, in addition to provisions applicable to the production, maintenance, and clerical employees, contains special provisions applicable only to the employees in the chemical laboratory. These provisions do not, however, appear in a separate contract but are integrated with the main contract.

This bargaining history demonstrates that, although the Board's 1945 decision set up two separate units, there has been a merger of the two units into one bargaining unit. From the beginning the

<sup>2</sup> *United States Metals Refining Company*, 64 NLRB 727.

parties have negotiated their contracts for production and maintenance employees, plant clericals, and laboratory employees on a broad over-all basis. The fact that special provisions for the chemical laboratory employees have sometimes appeared in separate, supplementary agreements, negotiated at the same time as the main agreement, does not alter our view that bargaining has, on the whole, been on a plant-wide basis.<sup>3</sup> The question is therefore presented whether the chemical laboratory employees may be severed from the plant-wide unit despite the foregoing bargaining history.

There are some 16 or 17 departments in the Employer's Carteret, New Jersey, plant, of which the chemical laboratory constitutes 1 department. The record shows that, among other things, the chemical laboratory runs tests to determine the qualitative contents of samples taken from the production lines. The chemical laboratory is located in a separate building from the rest of the plant and is under separate immediate supervision. It appears that varying degrees of skill are required of the chemical laboratory employees. One employee, the research chemist, holds a doctor of philosophy degree in chemistry, while several others are unskilled workers. The Board has held that work of the type performed by the chemical laboratory employees in the instant case is primarily technical in nature.<sup>4</sup>

Absent formal bargaining history on a plant-wide basis, the Board has sanctioned the establishment of separate units of technical employees<sup>5</sup> or of technical and professional employees.<sup>6</sup> The Board further has severed technical employees from existing plant-wide units despite past bargaining history because of the special interests, background, and functions of technical employees.<sup>7</sup>

The employees sought to be decertified in the instant case constitute a technical group, separate physically and functionally from the production and maintenance employees. So far as the record shows, this group comprises all the technical employees currently represented by the Intervenor. Accordingly, despite the past bargaining history on a broader basis we shall permit the chemical laboratory employees an opportunity to determine whether they wish the Intervenor to continue to represent them for the purposes of collective bargaining.

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<sup>3</sup> See *United States Metals Refining Company*, 88 NLRB 1079, where the Board dismissed a petition for a self-determination election among the plant clerical, restaurant, and hospital employees at the instant plant finding, among other things, that despite the supplemental agreements similar to those discussed above, bargaining had been on a plant-wide basis.

<sup>4</sup> *Phillips Chemical Company*, 83 NLRB 612; cf. *E. I. Dupont de Nemours & Company*, 69 NLRB 509.

<sup>5</sup> *Westinghouse Electric Corporation*, 89 NLRB 8; *Phillips Chemical Company*, *supra*.

<sup>6</sup> *Kelsey Hayes Wheel Company*, 85 NLRB 666, 669.

<sup>7</sup> *Wodaam Corporation*, 83 NLRB 335; *E. I. Dupont de Nemours & Company*, *supra*.

### The Disputed Categories

The parties are in disagreement as to the voting eligibility of five gangleaders and of the chemical laboratory secretary.

*The gangleaders.*—The Intervenor would exclude the gangleaders as supervisors, or, in the alternative, would exclude them as professional employees. The Employer contends that the gangleaders should be included in the unit.

The record shows that the gangleaders generally are more highly skilled and experienced and are somewhat better-paid than the rank-and-file employees of the chemical laboratory. The gangleaders are expected to transmit orders and to guide the operations of their respective sections. They spend from 50 to 80 percent of their time in performing their own work and the remainder in directing the work of others. They have no authority to hire, fire, discipline, or effectively to recommend such action, nor do they responsibly direct the work of the other employees in their sections. Upon the entire record, we find that the gangleaders are not supervisors, and we shall include them in the unit.<sup>8</sup>

There remains the Intervenor's contention that the gangleaders should be excluded from the unit as professional employees. We find merit in this contention as to the spectrograph gangleader. This employee is a college graduate who has majored in chemistry and performs work requiring a much higher degree of proficiency than the work of the other gangleaders. Twenty percent of his time is spent in directing the work of his subordinates, 50 percent is spent in routine work, and the remaining 30 percent is spent in research and in developing better methods for spectrograph analysis.<sup>9</sup> The spectrograph gangleader requires specialized knowledge in a new field of analytical chemistry. In the light of the foregoing facts, we find that the spectrograph gangleader is a professional employee, and we shall exclude him from the unit.

*The secretary.*—The Intervenor would exclude as a confidential employee the secretary of the chief chemist, who is in charge of the chemical laboratory. The Employer contends that the secretary should be included in the unit. The secretary does general clerical work. She also takes care of time cards and types warning letters to delinquent employees. There is no evidence that the chief chemist has any responsibility for the determination of the Employer's labor

<sup>8</sup> *H J Heinz Company*, 77 NLRB 1103; *Scott-Atwater Manufacturing Company, Inc.*, 90 NLRB No. 9.

<sup>9</sup> The spectrograph section tests a substance by burning it and breaking up its ore into a spectrum. The result is photographed through a prism, which measures the radiation of different wave lengths on a photographic plate.

policies, or that the secretary has access to any confidential information pertaining thereto. Accordingly, we will include her in the unit.<sup>10</sup>

We shall direct an election by secret ballot to be held among the employees in the chemical laboratory of the Employer's Carteret, New Jersey, plant, including the gangleaders and the secretary, but excluding chief chemist,<sup>11</sup> the research chemist,<sup>12</sup> the head sampler,<sup>13</sup> the spectrograph gangleader, guards, professional employees, and supervisors as defined in the Act. If the employees in the foregoing voting group do not select the Intervenor, the Intervenor will be decertified as to them; if on the other hand, they select the Intervenor, they will be taken to have indicated their desire to continue to be included in the production and maintenance unit now represented by the Intervenor.<sup>14</sup>

[Text of Direction of Election omitted from publication in this volume.]

<sup>10</sup> *Wise, Smith & Company, Inc*, 83 NLRB 1019

<sup>11</sup> This employee is in direct charge of the chemical laboratory. We shall exclude him as a supervisor

<sup>12</sup> In agreement with the parties we shall exclude this employee as a professional employee

<sup>13</sup> This employee does little, if any, work in the laboratory. In any event we shall exclude him as a supervisor inasmuch as he responsibly directs the activities of plant foremen.

<sup>14</sup> *Mountain States Telephone and Telegraph Company*, 83 NLRB 773.

C & D COAL COMPANY AND C & D TRUCKING COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, GENERAL TEAMSTERS' UNION No. 428, AFL. *Case No. 8-CA-360. March 15, 1951*

### Decision and Order

On November 22, 1950, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].