

WESTERN ASSOCIATION OF ENGINEERS, ARCHITECTS AND SURVEYORS *and*
SAN FRANCISCO AREA GROUP OF PROFESSIONAL EMPLOYEES, PETI-
TIONER. *Case No. 20-RC-1751. October 22, 1952*

Decision and Direction of Elections

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

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

1. The Employer Association, formed on August 29, 1951, and incorporated on March 25, 1952, is composed of 17 Employers¹ engaged in surveying, engineering, materials testing, and aerial mapmaking. Organized with the primary purpose of representing its member employers in labor relations matters, the Association is authorized to sign collective bargaining agreements for its members. The Intervenor, Operating Engineers Union, Local No. 3, AFL, contends that the Association is not an "employer" within the statutory definition. Although membership in the Association can be withdrawn at any time upon payment of accrued dues and charges, the Association is an agent of the member employers within the meaning of Section 2 (2) of the Act while such membership subsists. We therefore find that the Association is an employer and, further, that it is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.²

3. The Intervenor moved that the petition be dismissed on the ground that an association-wide unit is inappropriate in the absence of a history of collective bargaining on a multiemployer basis. As the Employer Association and the Petitioner seek multiemployer bargaining, and as no party is seeking single employer units, collective bargaining history is not a prerequisite to finding the multiemployer unit appropriate. Consequently, a question affecting commerce exists

¹ Norman B. Bailey, B. T. Berndtson, Drury Butler, California Engineering & Surveying Service, Norman O. Glover, George E. Goodall, Charles O. Greenwood, Walter B. Grimes, Clair A. Hill, E. A. Johnson & Associates, Inc., Kenneth C. Laugenour, Polk & Batham, O. J. Porter & Company, Harold S. Prescott, Frank H. Reynolds, Joseph E. Spink, and Yolo Engineers and Surveyors, some of which are herein referred to by surnames only: e. g., Hill or Porter.

² The Intervenor moved to dismiss the petition herein on the ground that the Petitioner is not a "labor organization" within the meaning of the Act, in light of the provision in the Petitioner's constitution that it shall not "restrain any member from negotiating directly with his employer for the betterment of his general welfare." We deem this protection of individual bargaining to be solely a matter of intraunion policy, which does not disqualify the Petitioner as a collective bargaining agent. Furthermore, the Board has certified the Petitioner as the collective bargaining agent of other employees. *Pacific Gas and Electric Company*, 98 NLRB No. 130.

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 Petitioner contended, and the Employer agreed, that the appropriate unit includes professional and both field and office technical employees working for employer members of the Association.³ The Intervenor seeks to represent a unit limited to the field technical employees, excluding the office technical and professional employees.

There are 39 office technical and professional employees, and 78 employees in the field survey crews. Depending somewhat on the size of the employer firms and the qualifications of the employees involved, many of the field and office technical employees work interchangeably on the field surveys and in the office. The leaders of the field crews, called chiefs of party, ordinarily spend from one-half to 1 hour in the mornings and evenings in the office getting instructions and turning in data, and there is a substantial amount of contact between the members of the field crews and the computers and draftsmen in the office, who discuss the sufficiency of the field data obtained. In addition, all the field employees are customarily given jobs in the office during adverse winter weather, such jobs ranging from computing, drafting, and map-making to repairing equipment.

Many of the field crew employees who are engaged in surveying work and, on construction jobs, in assisting, coordinating, and inspecting the work of the construction crafts, work primarily away from the office. However, there is a close community of interest between the office and the field technical workers, resulting from their functionally associated work and their frequent contact. We accordingly find a unit of both office and field technical workers, together with the professional employees if they vote for inclusion, appropriate for collective bargaining.⁴

Issues were raised at the hearing as to the professional status or unit placement of the following categories:

Civil engineers: The parties stipulated that the civil engineers employed by Goodall, Hill, and Spink are professional employees, but that the civil engineer employed by Porter should be excluded as a supervisor, and we so find. There was some dispute, however, about the status of civil engineers O'Gara, Develey, and Chamberlain, employed by Johnson. The parties agreed that engineer O'Gara is a professional employee, but the Intervenor contended that he is also a supervisor. There are, however, four associates in Johnson's firm, not listed as employees, who are licensed engineers, and who supervise and responsibly direct both professional and technical employees. We

³ The Petitioner seeks two separate units if the professional employees vote for separate representation.

⁴ *George A. Fuller Company*, 78 NLRB 207; *San Antonio Machine & Supply Company*, 85 NLRB 143.

therefore agree with the Employer and the Petitioner that engineer O'Gara, like Johnson's other professional engineers, is not a supervisor. As to civil engineer Devey, who was recently graduated from engineering school and is gaining experience under the direction of an experienced civil engineer, we agree with the Intervenor that he is not a technical employee, as contended by the Employer and the Petitioner, but a professional employee within the meaning of Section 2 (12) (b) of the Act. The other civil engineer in question, Chamberlain, who the Employer and the Petitioner asserted is not a professional engineer, contrary to the Intervenor, has had 14 years of experience and 2 or 3 years of college. Although his duties of coordinating the office work on engineering projects require a general knowledge of engineering in its various phases, we find that his work is substantially routine in nature, involving limited exercise of discretion and judgment. We shall therefore include him in the technical unit.

Assistant engineers: Only Goodall employs persons in this classification. The parties agreed that they are nonsupervisory professional employees, and we so find.

Structural, electrical, mechanical, and sanitary engineers: The parties agreed that these are professional employees,⁵ with the exception of mechanical engineer La Salle, employed by Johnson. Like civil engineer Devey, he is a recent engineering graduate, working to gain experience in his engineering field. We find him also to be a professional employee.

Office engineers: The parties agreed that these employees are technical, not professional, employees, and we so find.

Electrical draftsman: Johnson employs one person in this category. Like civil engineer Devey and mechanical engineer La Salle, he is a recent engineering graduate "on his way up" to becoming a fully qualified engineer. He works under the supervision of two electrical engineers. As contended by the Intervenor, but opposed by the Employer and the Petitioner, we find him to be a professional employee.

Cartographer-photogrammetrist: The parties agreed that the one employee in this classification is either a professional or semiprofessional employee. The making of surveys and maps from aerial photographs requires a high degree of skill in the use of very precise and complex instruments, and some knowledge of higher mathematics. There is testimony, however, that though the work is highly specialized and is not supervised, it becomes somewhat routine in nature. As the standard for professional employees is high, and as this employee is not an engineering graduate, we find that he is not a professional employee within the meaning of the Act.

⁵ As in the case of civil engineer O'Gara, we find that the electrical, mechanical, and sanitary engineers employed by Johnson are not supervisors. The parties stipulated that the structural engineers are nonsupervisory.

Field-survey crews: The parties agreed, and we find, that the chiefs of party,⁶ inspectors, instrumentmen, chainmen, rodmen, and field assistants⁷ are nonsupervisory technicians who should be included in the technical unit. The Intervenor contended, however, that the land surveyors, who are either licensed surveyors or particularly skilled chiefs of party, are supervisory professional employees. As their duties are the same as those of other chiefs of party, and as they do not possess the statutory indicia of supervisors,⁸ we overrule the Intervenor's contention and shall include them also in the technical unit.

Office technical workers: The parties agreed, and we find, that the draftsmen, computers, mappers, and laboratory technicians are nonsupervisory technical employees.⁹ We also find that the field geologist, so-called, who obtains soil samples for testing, and makes preliminary classifications of the soil, is a nonsupervisory technical employee.

The bookkeepers, secretaries, and janitors are stipulated to be nontechnical employees, and we agree.

As the parties recognize, Section 9 (b) (1) of the Act requires that the professional employees' desire with respect to their inclusion in a unit with nonprofessional employees must first be ascertained. Accordingly, we shall direct separate elections in the following voting groups:¹⁰

(a) All professional employees of the Employer in northern California, excluding all other employees and supervisors as defined in the Act.

(b) All technical employees of the Employer in northern California, excluding professional employees, bookkeepers, secretaries, janitors, and supervisors as defined in the Act.

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) Do you desire to be included in a

⁶ As chief of party Briley is the son of Reynolds' general manager, we exclude Briley from the bargaining unit.

⁷ This classification includes chainmen or rodmen when performing the duties of stake carriers, brush men, and axe men. Temporary, casual laborers who sometimes work with these crews are not to be included in the unit.

⁸ One of the land surveyors, Lonnerberg, employed by Hill, has been given authority to settle disputes in Hill's absence. The Intervenor contends that he is therefore a part-time supervisor. As he has no other supervisory authority, and has had no occasion to exercise this authority, we find that he is not a supervisor within the meaning of the Act.

⁹ The Intervenor contended that draftsman Brownell, employed by Butler, is a professional employee because he works as a designing engineer. Brownell has had 2 years at college, has taken a correspondence course in engineering, and has had 5 years of experience. His duties include designing pipelines for water, sewage, and drainage, but are of a routine nature, under the supervision and direction of Butler. Only 4 to 6 weeks are required to train a person in this work. Brownell is paid at the rate of \$2 an hour. We find that he is not a professional employee.

¹⁰ The Intervenor did not indicate whether or not it wishes to be on the ballot for the larger unit found appropriate. As the Intervenor has made a substantial showing of interest in this unit, we shall direct that its name be placed on the ballot. However, the Regional Director is authorized to permit the withdrawal of its name upon the timely request of the Intervenor.

unit with the nonprofessional employees? (2) Do you desire to be represented for the purposes of collective bargaining by the Petitioner or by the Intervenor? If a majority of the professional employees vote "Yes" to the first question, indicating their wish to be included in a unit with the nonprofessional employees, they will be included in such unit, which, in that event, we find to be appropriate. Their votes on the second question will then be counted together with the votes of the nonprofessional employees to decide whether the Petitioner or the Intervenor has been selected to represent the combined bargaining unit. If, on the other hand, a majority of the professional employees vote against inclusion, we find separate units of professional and technical employees to be appropriate. The votes of each voting group will then be counted separately to decide whether or not that group desires to be represented by the Petitioner or by the Intervenor.

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

NEHI BOTTLING CO., INC. *and* INDEPENDENT BEVERAGE WORKERS UNION, PETITIONER. *Case No. 3-RC-1020. October 22, 1952*

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 John Weld and Leonard Leventhal, hearing officers.¹ The hearing officers' 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, Styles, and Peterson].

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

1. The Employer is engaged in commerce within the meaning of the Act.²
2. The labor organizations involved claim to represent certain employees of the Employer.³

¹ The hearing on June 16, 1952, was held before John Weld; the hearing on June 20 was conducted before Leonard Leventhal.

² The Employer produces and distributes nonalcoholic beverages in the Buffalo, New York, area, under exclusive franchises granted by Nehi Corporation, the principal offices of which are in Columbus, Georgia. Although in form the franchises were issued to the three officers and stockholders of the Employer, Nehi Corporation has dealt with the Employer with knowledge of the corporate use of the franchise since about 1938. We find that the Employer's operations form an integral part of a multistate enterprise and we shall, therefore, exercise jurisdiction. *American Factors Co.*, 98 NLRB 447.

³ At the hearing, Intervenor (International Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers, CIO) refused to stipulate that Petitioner is a labor organization.