

ager of the electrical department, the shop foreman of the automotive machine shop, the office manager, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

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**Wyandotte Chemicals Corporation and William C. Cobb, Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 578, AFL-CIO.** *Case No. 21-RD-285. August 24, 1956*

#### 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 W. Kelly, 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 is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner, an employee of the Employer, asserts that the Union, hereinafter referred to as the Teamsters, is no longer the bargaining representative, as defined in Section 9 (a) of the Act, of certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to decertify the Teamsters as the current bargaining representative of an alleged unit of warehouse and shipping employees. The Teamsters opposes the petition on the ground that the alleged unit is not the proper unit for decertification purposes contending that the shipping clerk and truckdriver composing the alleged unit are part of an overall unit of production and maintenance employees which for the past 9 or 10 years has been bargained for jointly by the Teamsters and the International Chemical Workers Union No. 11, AFL-CIO, hereafter called the Chemical Workers. It also argues that a unit consisting of the shipping clerk and the truckdriver is an inappropriate unit and therefore may not be the basis for a decertification petition. The Chemical Workers did not formally appear in the proceeding and has taken no position on the question. The Employer also takes no position on the question whether

the petition for decertification may be properly entertained, but it argues that a decision herein should be consistent with a pattern of bargaining which, it believes, has many elements of separate, rather than joint, bargaining.

The Employer, a Michigan corporation, is engaged in the manufacture, sale, and distribution of chemical cleaning compounds. The Employer operates in several States but only its Los Nietos, California, plant, which it acquired by purchase in 1950 from the Pacific Chemical Company, is involved herein. Since 1946, the Chemical Workers and the Teamsters<sup>1</sup> have bargained collectively with the Employer or its predecessor. Agreements reached by the parties have been embodied in single documents signed by the Employer and both unions. The latest of such agreements was entered into on March 27, 1955, which agreement was reopened pursuant to timely notice of an intent to modify or terminate separately given by the unions.<sup>2</sup> There is no record of Board certification. Negotiations for a new agreement having apparently stalemated, the present petition was filed herein on April 15, 1956, by the Petitioner who is at present employed as a truckdriver.

In all agreements negotiated by the unions since 1946, the Teamsters and Chemical Workers were designated as "The Unions." Initially, the recognition clause of the various contracts provided that "The Unions" were recognized as the sole collective-bargaining "agent" for "all factory, warehouse, and shipping department employees." Later agreements modified the wording of this clause to provide that the unions were recognized as the exclusive bargaining "representatives" for the factory, warehouse and "shipping" employees. The agreements also provided for a union shop and employee seniority. The union-shop clause, which was essentially the same in all contracts,<sup>3</sup> required, in substance, membership in "The Union" as a condition of employment. The seniority clause, also uniform in all contracts, specified that the "seniority system shall prevail by units of the two Unions." Furthermore, although not adverted to at the hearing, it appears from the Board's administrative records that sometime in June 1948, the Teamsters and Chemical Workers by separate petitions, for separate units of employees, sought union authorization elections.<sup>4</sup> The Board's records also show that following each elec-

<sup>1</sup> The 1946 agreement reads that it was entered into by the Employer, the Chemical Workers, and Local 396 of the Teamsters. The 1948 contract lists Local 578 of the Teamsters as a party to the agreement.

<sup>2</sup> The Teamsters sent notice of a desire to "terminate" the agreement whereas the Chemical Workers sent notice of a desire to "modify" the agreement.

<sup>3</sup> Beginning with the 1954 agreement, the words "subject only to such limitations as are imposed by law" were added to the clause.

<sup>4</sup> In Case No. 21-UA-1485, the Teamsters sought an election among a unit of "truckdrivers, warehousemen and shipping clerk-driver." In Case No. 21-UA-1549, the Chemical Workers sought an election in a unit of all production and maintenance employees, excluding, however, the categories of employees named in the Teamsters' petition.

tion the unions were separately certified as having been authorized to negotiate union-security contracts.

As to the conduct of negotiations, it is not disputed by the Petitioner, who was the only witness in this proceeding, that contract negotiations were carried on in joint meetings of the Employer and representatives of the two unions. Prior to such negotiations, however, it was the practice for each union to discuss proposed contract demands with its own members before submitting such demands to the Employer. At times, company counterproposals were submitted to employees at joint meetings for purposes of voting on their acceptance or rejection, and where tentative agreements were negotiated, it was also the practice of the unions to secure the informal approval of their respective members of such agreement before submitting the same for ratification at a joint meeting of all employees. However, it further appears that during the negotiations which followed the reopening of the 1955 agreement, each union submitted a different proposal for a pension plan,<sup>5</sup> that submitted by the Teamsters being the prevailing plan of the Teamsters International organization and intended to apply only to its own members. The Teamsters' plan was rejected by the Employer who proposed instead a pension plan applicable to all employees, and one which apparently met with the approval of the Chemical Workers as well as the two employees who were members of the Teamsters. The Employer's pension proposals, however, were not submitted by either union to any meeting, joint or otherwise, of the employees for the purpose of voting on their acceptance or rejection. On the contrary, the Teamsters' representative informed its two members that it would insist on the acceptance of its own pension plan and would, if necessary, strike on this issue alone. The Teamsters thereafter without the joint action of the Chemical Workers appealed to the Los Angeles Central Labor Council to initiate strike action. The record shows, however, that such similar independent strike action had been initiated in the past by both unions.<sup>6</sup>

We believe that the record herein does not support the Teamsters' contention that it was the clear intent of the parties to bargain only on a joint basis and for only a single unit of production and maintenance employees. On the contrary, we are persuaded by the evidence in the case that negotiations, although apparently joint in form, were nevertheless intended to apply to separate units of employees. Thus, the seniority clause of the several contracts clearly provides for two

<sup>5</sup> Other proposals were submitted by the Chemical Workers as its separate proposals.

<sup>6</sup> As to the Chemical Workers, the record shows that in 1953 it petitioned the Los Angeles Central Labor Council to place the Employer on the official "We Do Not Patronize" list.

separate units for seniority purposes;<sup>7</sup> the union-shop clause speaks in terms of the separate interests of each union, and the union authorization petitions of the two unions unequivocally provided for separate units for union-security purposes. Significant in that regard is the evidence in the record that transfers from other positions in the plant to those under the jurisdiction of the Teamsters were made after first securing Teamsters' approval, and that, upon such transfer, employees were required to transfer their union membership to the Teamsters.<sup>8</sup> In addition, we take note of the large measure of independent action reserved to each union. In view of the foregoing, we conclude that the collective bargaining of the parties was designed to, and did in fact, preserve the separate representative interests of the two unions.<sup>9</sup> In such circumstances, the preservation of the unions' separate interests is not vitiated by the mere execution of a single contract, and the participation of the unions in joint meetings with the Employer.<sup>10</sup>

It is apparent that the foregoing history of collective bargaining until the present time has been on the basis of two separate units, that represented by the Teamsters being a unit of warehouse and shipping employees, and that represented by the Chemical Workers being a unit of all other production and maintenance employees excluding those represented by the Teamsters. In view of such separate bargaining history of almost 10 years for the warehouse and shipping employees, we find, contrary to the Teamsters' contention, that a unit of such employees is appropriate for decertification purposes.<sup>11</sup>

We find therefore that all warehouse and shipping employees, excluding all other production and maintenance employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and RODGERS took no part in the consideration of the above Decision and Direction of Election.

<sup>7</sup> The Teamsters' argument that the language of the seniority clause can be construed as providing for seniority on a departmental basis finds no support in the record. There is no testimony that such was the intent of the parties, nor do the contracts provide for any other departmental seniority.

<sup>8</sup> *Phelps Dodge Corporation*, 98 NLRB 726, 730.

<sup>9</sup> *Phelps Dodge Corporation*, *supra*.

<sup>10</sup> *Phelps Dodge Corporation*, *supra*. Cf. *Shell Oil Company*, 116 NLRB 203 (Members Peterson and Rodgers dissenting), where a majority of the Board found that separate units had been preserved, notwithstanding the appearance of joint bargaining. We regard the present case as indicating this result even more clearly than in the *Shell Oil* case. We do not agree with the Teamsters that the decision in *The Langenau Manufacturing Company*, 115 NLRB 971, is controlling. The case is distinguishable on its facts.

<sup>11</sup> *Standard Oil Company of California*, 113 NLRB 475, 477. Cf. *Kraft Foods Company*, 92 NLRB 193.