

represented by the Printing Pressmen a multicraft unit of maintenance employees in the board mill, and the severance of such a unit is contrary to Board policy,⁶ we shall dismiss the petition.⁷

[The Board dismissed the petition.]

⁶ See, e. g., *Fort Die Casting Corporation*, 115 NLRB 1749; *American Bemberg, Division of Beaunit Mills, Inc.*, 111 NLRB 963.

⁷ Nor is our determination affected by the fact that the Printing Pressmen prior to the hearing advised the Board that it desires to relinquish jurisdiction over the board mill maintenance employees. It is clear that there has been no cessation of representation of the board mill maintenance employees and that the Printing Pressmen will continue to represent them under their existing certification.

American Potash & Chemical Corporation (formerly Western Electrochemical Company)¹ and International Chemical Workers Union, Local 218, AFL-CIO. Case No. 20-RC-2742 (Voting Group 3). March 5, 1957

**ORDER DENYING PETITION FOR CLARIFICATION
OF CERTIFICATION**

On October 17, 1955, following elections held pursuant to a Decision and Direction of Elections,² the Board issued a certification of representatives in which the International Chemical Workers Union, Local 218, AFL-CIO, was certified as the exclusive bargaining representative of a unit of production and maintenance employees. Thereafter, about October 22, 1956, the Employer filed a "Petition for Clarification of Certification" requesting the Board to "find that Research Technicians are not included within the unit as certified." On November 13, 1956, the Chemical Workers filed a "Statement in Opposition to Petition to Clarify Unit." On November 23, 1956, the Board remanded the matter to the Regional Director for the Twentieth Region for the purpose of holding a hearing on the issues raised by the Employer's petition. Pursuant thereto, on December 10, 1956, a hearing was held before David E. Davis, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³ Upon the entire record in the case, the Board finds:

¹ Since the issuance of the certification of representatives herein, American Potash & Chemical Corporation has become the successor to Western Electrochemical Company and at the present hearing moved to amend the certification by changing the name of the Employer. The Chemical Workers changed its affiliation after the certification and at the hearing also moved to amend the certification to reflect its current name. There was no opposition to either of these motions. Accordingly, the certification of representatives issued on October 17, 1955, in Case No. 20-RC-2742 is hereby amended to show the name of the Employer as American Potash & Chemical Corporation and that of the bargaining representative as International Chemical Workers Union, Local 218, AFL-CIO.

² 112 NLRB 1276.

³ At the opening of the hearing, the hearing officer granted a motion to intervene by International Association of Machinists, Local Lodge No. 845, AFL-CIO, the representative

About February or March 1955 the Employer assigned operators who had been performing production work to jobs in building T-4 of the Employer's Henderson, Nevada, operation to assist, among other things, in the performance of experimental work. In its Decision and Direction of Elections, issued on June 21, 1955, the Board found appropriate, and thereafter certified the Chemical Workers as the bargaining representative for, a unit of "All production and maintenance employees, excluding all machinists, machinists' helpers, welders (machinists), office clerical employees, chemical, metallurgical, engineering and other professional employees and their assistants, timekeepers, time checkers, messengers, confidential employees, plant protection force (guards and firemen), [employees in two other voting groups in which the Decision directed elections], and supervisors as defined in the Act." On April 1, 1956, the Employer and the Chemical Workers signed a collective-bargaining contract for this unit of employees, effective to April 1, 1957, and providing for automatic renewal at yearly intervals thereafter. The operators then doing the work in building T-4 to which the operators were first assigned in 1955 were included within the coverage of that agreement.

In May 1956 the Employer transferred the research and experimental work conducted at another of its plants to building T-4 at Henderson, Nevada, and the operators covered by the Chemical Workers' collective-bargaining contract continued to work in building T-4 as part of the research department. About the same time the Chemical Workers agreed to the Employer's request that certain research laboratory technicians working in building T-4 be excluded from the Chemical Workers' bargaining unit. About August or September 1956 the Employer requested that the seven operators then working in building T-4 also be excluded from the Chemical Workers' contract, but the latter refused. On September 17, 1956, the Employer unilaterally prepared a job analysis for research technicians, a new job classification, intended to replace the operators the Chemical Workers had refused to exclude from the bargaining unit. According to the Employer, the job analysis for research technicians established more demanding requirements than had existed for the operators they were to replace. The record shows, however, that if the Chemical Workers had agreed to exclude the operators working in building T-4 from the unit, they could have continued working in the research department performing the functions set out in the newly created research technician job classification. Indeed, the expe-

of the Employer's machinists. After the initial stages of the hearing, the hearing officer ruled that the IAM's intervention would be limited to protecting its interest as representative of the unit of machinists. The IAM thereupon moved for a further hearing and the right to examine witnesses without limitation. We find that the hearing officer's ruling was correct and was not in any way prejudicial to the IAM's rights or interests. Accordingly, we hereby deny the IAM's motion for a further hearing.

rience and functional requirements for the job of research technician were essentially those of the operators.

Upon the Chemical Workers' refusal to agree to the exclusion of building T-4 operators from its unit and its refusal to allow those jobs to be reclassified as research technician, five of the operators were reassigned to jobs elsewhere in the plant. The other two continued to work in building T-4. Shortly thereafter, the Employer filled the open research technician positions, apparently with new employees. On October 4, 1956, the Chemical Workers filed a grievance contending the Employer had violated the collective-bargaining agreement.

The Employer contends that the research technicians are technical employees and therefore should be excluded from the unit. The Chemical Workers and the IAM contend, in effect, that the Employer is, by its past practice, foreclosed, at this time, from requesting exclusion of the research technicians from the certified unit.

This is not the type of case in which the unit placement depends upon statutory factors. In other words, the research technicians are not a classification that the statute requires be excluded from the certified unit, such as guards. Further, reference to the language of the Board's certification does not resolve the problem.⁴ Thus, this case poses, as an initial issue, whether the parties' past actions establish an accord as to the unit placement of the research technicians.⁵

The Employer takes the position that the parties never considered, and therefore never reached agreement on, the unit placement of research technicians. The record establishes the contrary. At the hearing upon the representation petition no party to the proceeding urged that the building T-4 operators be excluded from the unit as technical employees or for any other reason. The agreement to include the operators in the production and maintenance unit is affirmatively established by the failure of any party to challenge the right of the operators to vote in the initial election or in the runoff election in the production and maintenance unit and by the signing of a collective-bargaining agreement by the Employer and the Chemical Workers in April 1956 that included in its coverage the operators who were then working in building T-4. The record establishes that the research technicians have succeeded to the very same jobs once performed by the building T-4 operators; as noted above, two of the operators actually became research technicians. Contrary to the Employer's contention, the requirements for filling the position now designated

⁴ We reject the Employer's contention that the Board's certification requires exclusion of the research technicians from the unit if they are, in fact, technical employees. The Board has, as a policy matter, established the practice of excluding technical employees from production and maintenance units upon the timely request of a party to a representation proceeding. There is, however, no Board policy of excluding technical employees from production and maintenance units where no party makes such a timely request.

⁵ *Clarostat Mfg. Co., Inc.*, 105 NLRB 20, 22-23.

by the Employer as research technician are not significantly, if at all, more demanding than they had been for the operators who had formerly performed the work. Indeed, it is evident that, but for the disagreement between the Employer and the Chemical Workers as to the unit exclusion of the building T-4 operators, all of those very operators would have continued in their jobs upon a mere change of their job title and formalization of their job analysis.

Inasmuch as the jobs of the building T-4 operators and the research technicians are, for all practical purposes, the same except for their titles, we find that the research technicians (building T-4 operators) are included in the unit certified by the Board and covered by the parties' collective-bargaining contract.⁶ Accordingly, we shall deny the Employer's petition.⁷

[The Board denied the petition.]

MEMBER RODGERS took no part in the consideration of the above Order Denying Petition for Clarification of Certification.

⁶ *Sangamo Electric Company*, 112 NLRB 1310, 1311-12. The Employer's reliance upon *Bermite Powder Company*, 116 NLRB 65, is misplaced because the Board specifically held therein ". . . nor does the record disclose the parties' intentions, in reference to [the employees in issue] . . ."

⁷ *Sangamo Electric Company*, *supra*. In view of this finding, it is unnecessary to determine whether the research technicians are technical employees

Peoria Plastic Company and International Association of Machinists, AFL-CIO, Petitioner. *Case No. 13-RC-5141. March 5, 1957*

SUPPLEMENTAL DECISION, ORDER, AND SECOND DIRECTION OF ELECTION

On November 1, 1956, pursuant to the Board's Decision and Direction of Election dated October 11, 1956, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the unit heretofore found appropriate. At the conclusion of the election, a tally of ballots was furnished the parties. The tally shows that of approximately 27 eligible voters, 26 cast ballots, of which 9 were for, and 16 against, the Petitioner. There was one challenged ballot.

On November 2, 1956, the Petitioner filed timely objections to the conduct of the election, a copy of which was served on the Employer. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the objections and, on December 4, 1956, issued and served on the parties his report on ob-