

ployees, guards, watchmen, professional employees, the labor foreman, the bulldozer operator foreman, and all other supervisors as defined in the Act.⁶

5. On April 12, 1961, the date of the hearing, the Employer had 61 employees in the above unit. Of these 61, 8 were carpenters, 7 were power equipment operators, 1 was a welder, 1 was an oiler, 1 was a mechanic helper, 2 were heavy duty mechanics, 2 were wagon drillers, 5 were power tool operators, 1 was an air tool operator, 1 was a form setter, 1 was a powderman, and 31 were laborers. The Intervenor contends that an election should not be held at this time, because a representative complement of employees is not now employed, but should be deferred until October 1, 1961. The Employer anticipates that at that time it will have increased its work force to between 176 and 190 employees and will maintain this employment level for a period of 6 months. Thereafter, the number of employees will decrease to approximately 100 and continue at that level until the dam is completed. The Employer also anticipates that as the work on the dam progresses it will add workers in job categories, such as cement finishers, steelworkers, road grader operators, crusher operators, and cement mixer operators, which had no employees in them at the time of the hearing. We find, however, that when the election herein directed takes place, employment will be at or near its peak and the Employer's work force will constitute a substantial and representative complement of employees. Accordingly, we shall direct an immediate election and eligibility will be determined by the usual payroll.⁷

As we have found that a unit of all employees is alone appropriate, we shall grant the request to place the name of the Joint Intervenor on the ballot.⁸

[Text of Direction of Election omitted from publication.]

⁶ The parties agree that the project manager, project superintendent, and master mechanic are supervisors and that the engineers are professional and should be excluded as such.

⁷ See *Husmann Refrigerator Company*, 125 NLRB 621, 623.

⁸ If successful, the Joint Intervenor will be certified jointly. The Employer may then insist that it bargain jointly for the employees it represents

E. F. Drew & Co., Inc.¹ and United Packinghouse, Food & Allied Workers, AFL-CIO, Petitioner. *Case No. 22-RC-1179. September 14, 1961*

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 Jonas Aarons, hearing officer.

¹ The Employer's name appears as amended at the hearing.

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 [Chairman McCulloch and Members Rodgers and Fanning].

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

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

Following a consent election held in October 1959, the Petitioner was certified as bargaining representative for all production and maintenance employees at the Employer's Boonton, New Jersey, operation, excluding office clerical employees, plant clerical employees, laboratory employees, professional employees, guards, watchmen, and supervisors as defined in the Act. A contract covering this unit which was signed by the parties effective October 16, 1959, expired October 16, 1960. The petition herein was filed on April 7, 1961.

The Petitioner requests a unit which, it contends, is in conformity with the previously existing contract unit. In disagreement with the Petitioner, the Employer would exclude the "temporary" employees, but would include certain of the biweekly paid employees, the plant clericals, pilot plant operating employees, margarine property testers, and fatty acid chloride operating employees.

The plant clerical employees: As these employees were not part of the unit previously represented by the Petitioner, they would not be included, in any event, without being given an opportunity to vote as to whether or not they desire to become part of the unit.² In view of the fact, however, that the Petitioner does not claim to represent these presently unrepresented employees whom the Employer alone would include, we do not direct a self-determination election among the plant clericals.³ We shall therefore exclude them.

The "temporary" employees: The record shows that the Employer hired 26 employees during the month of April 1961. The Petitioner contends that these employees should be included and accorded the right to vote, since they are permanent employees and part of the production and maintenance group. However, testimony on behalf of the Employer shows that these 26 employees were hired for a particu-

² *The Zia Company*, 108 NLRB 1134

³ See *Du-Wel Decorative Company, etc.*, 125 NLRB 31, 32, and 33

lar job, were told that they were merely temporary employees for an approximate duration of 10 to 12 weeks, and were given special record cards stamped "temporary." They were hired through the U.S. Employment Service, which was told the jobs were to be temporary in nature. At the time of the hearing, it was estimated the job for which they were hired would end on July 1, 1961. At it appears that these employees were hired for one job only, and have no substantial expectancy of continued employment, we find that they are temporary employees and shall exclude them from the unit.⁴

The Petitioner contends that the fatty acid chloride operating employees, the margarine property testers, and the pilot plant operating employees should be excluded on the ground that they are technical employees. The record reveals that the fatty acid chloride department is not now in operation, and will not be put in operation until late summer or early fall. One of the two employees who had worked in the department has been assigned to the New Jersey laboratory, the employees in which the parties stipulated are part of the production and maintenance group. The other employee remained to clean up the department and help get it ready for reopening in the future. When it does reopen, it will be a part of the New Jersey laboratory operation. These employees are hourly paid, have no specialized training, and do routine work under close supervision. There is one margarine property tester. He checks the weights of margarine cartons, and the melting point of margarine oil. The operations are routine and repetitive in nature and require no special training. He is hourly paid and works under close supervision. There are two pilot plant chemical operators in dispute. Their work consists in heating and agitating fatty acid and alcohol together in kettles and stills to form an ester (compound), which is then put into drums. The work is routine and repetitive in nature, and requires no special training. They are hourly paid and work under close supervision. On the entire record, we find that the foregoing employees are not technical employees under the Board's precedents.⁵ They were therefore within the inclusion of the production and maintenance contract unit. We shall include them in the unit.

The *biweekly paid employees*: The Petitioner contends that all bi-weekly paid employees should be excluded from the unit on the ground that they receive superior benefits to the production and maintenance employees. The record shows that the fatty acid chloride operating employees, the pilot plant operating employees, and one material handler in each of the following departments—edible, power chemicals,

⁴ See *Sealite, Inc.*, 125 NLRB 619. In view of their exclusion from the unit, these temporary employees shall also be excluded from voting. However, this does not preclude the possibility that some of the temporary employees may, prior to the eligibility date, fill vacancies in permanent positions and thereby become eligible to vote.

⁵ See *Litton Industries of Maryland, Incorporated*, 125 NLRB 722.

dairy, textile, and factory office—are paid on a biweekly basis. The office clericals, and two of the six plant clericals, who are excluded, are also paid on a biweekly basis. Petitioner does not object to the inclusion of the classifications of material handlers or chemical operators in general, but only to inclusion of the employees in these classifications who are biweekly paid. The biweekly paid employees receive 2 weeks vacation during the first 5 years, as opposed to 1 week for production and maintenance employees; they have more sick leave benefits, and some are paid slightly higher wages. We find that their interests and duties are the same as those of the production and maintenance employees, and we shall therefore include them in the unit.

The alleged supervisors: The Petitioner alleges that Edmond Tuttle, Robert Strubeck, Elsa Lehman, and Louis DeFiore, should be excluded as supervisors. The Employer contends they are merely leadmen and should be included. The Employer's testimony, which is un rebutted, indicates that they do not have the power to hire, fire, transfer, discipline, reward or promote, or to effectively recommend any such action. As it does not appear that these individuals possess any of the indicia of supervisory authority, we shall include them in the unit.

Accordingly, we find that the following employees at the Employer's Boonton, New Jersey, operation, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including pilot plant operating employees, margarine property testers, fatty acid chloride operating employees, and employees in these classifications who are biweekly paid, but excluding plant clerical employees, temporary employees, office clerical employees, laboratory employees,⁶ salesmen, guards, watchmen, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁶ The classification "laboratory employees," whom the parties agreed to exclude, does not encompass the employees in the New Jersey laboratory division.

Pratt & Whitney Aircraft Division of United Aircraft Corporation, Florida Research and Development Center and Raymond S. Schutta. *Case No. 12-CA-1420. September 15, 1961*

DECISION AND ORDER

On December 15, 1960, Trial Examiner John C. Fischer issued his Intermediate Report, finding that the Respondent had not violated Section 8(a) (4) and (1) of the Act as alleged in the complaint and