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AMERICAN INSTITUTE OF MINING & METALLURGICAL ENGINEERS
29 WEST 39TH STREET
NEW YORK 18, N.Y.

OFFICE OF THE SECRETARY

Our 76th Year
May 2, 1947

To the Members of the Board of Directors
and the Chairmen of the Local Sections.

Gentlemen:

Herewith is a copy of Part I of the "Manual on Collective Bargaining for Professional Employees" as prepared by the Committee on the Economic Status of the Engineer on which the Institute is represented by F. B. Foley, Scott Turner, and Lewis E. Young. The circumstances of publication are detailed in the pamphlet itself. I may mention that the AIME representatives have not yet approved the proposed text for Parts II and III, the projected publication of which is indicated on the title page.

Any member of the Institute may obtain a copy of the Manual -- so long as the supply lasts -- by sending $1 to the Office of the Secretary.

Sincerely yours,

A. B. PARSONS
Secretary

(Enc.)

Manual on Collective Bargaining for Professional Employees

PART I

The National Labor Relations Act
and Professional Employees

Published by

The Committee on the
Economic Status of the Engineer

Manual on Collective Bargaining for Professional Employees

PART I

The National Labor Relations Act and Professional Employees

Prepared by Dr. WALDO E. FISHER, Professor of Industry, The Wharton School, University of Pennsylvania; and the Committee on Collective Bargaining and Related Matters of the American Institute of Electrical Engineers; in collaboration with the Committee on Collective Bargaining by Engineers in Professional Work, a survey committee of the Committee on the Economic Status of the Engineer.

(A Committee of Engineers Joint Council)

PUBLISHED BY

The Committee on the Economic Status of the Engineer

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29 West 39th Street
New York 18, N.Y.

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33 West 39th Street
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PART I: The National Labor Relations Act and Professional Employees

PART II: Collective Bargaining, Mediation and Arbitration

PART III: The Objectives, Structure and Tactics of Labor Organizations

PRINTED IN THE UNITED STATES OF AMERICA

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CONTENTS

PART I

FOREWORD

THIS MANUAL has been prepared for the primary purpose of accurately informing professional employees, especially professional engineering employees, on matters pertaining to Collective Bargaining under the National Labor Relations Act (Wagner Act) as it now stands on our statute books.

Its publication is sponsored by Engineers Joint Council* (E.J.C.) and the National Society of Professional Engineers (N.S.P.E.). The draft was reviewed and approved by Joint Council's Committee on the Economic Status of the Engineer* on which committee N.S.P.E. has three representatives, as has each of the five societies represented on Engineers Joint Council.

The original draft was prepared by Dr. Waldo E. Fisher, Professor of Industry at the Wharton School, University of Pennsylvania, for the Committee on Collective Bargaining and Related Matters* of the American Institute of Electrical Engineers (A.I.E.E.). When it was decided that the publication of such a Manual should be sponsored jointly by E.J.C. and N.S.P.E., it was suggested that the manuscript, as originally prepared for A.I.E.E., but with modifications to make it acceptable to the other five societies, should be used as the basis for the Manual. This suggestion was promptly endorsed by A.I.E.E. Accordingly, the Committee on Collective Bargaining by Engineers in Professional Work,* a Survey Committee of the Committee on the Economic Status of the Engineer, was assigned the task of working with Dr. Fisher to make the desired modifications in the A.I.E.E. manuscript.

Although the primary purpose of the Manual is to provide professional employees with accurate information pertaining to Collective Bargaining under the National Labor Relations Act as now written, Chapter III examines certain proposals for modifying the Act which have come to the attention of the several committees which have had a part in preparing the Manual. Because some of these proposals seem to be based on inaccurate or incomplete information, it was felt that it would be helpful to professional employees to have accurate information on such matters also.

It is the intention of the sponsors to present in the Manual an objective analysis which should be helpful to professional employees in forming their own conclusions regarding collective bargaining, unionization and possible revisions of the National Labor Relations Act.

The complete Manual is divided into three parts with appropriate Appendix sections, the three parts being:

Part I: The National Labor Relations Act and Professional Employees
Part II: Collective Bargaining, Mediation and Arbitration
Part III: The Objectives, Structure and Tactics of Labor Organizations

In the interest of getting accurate information into the hands of professional employees at the earliest possible date, the present issue includes Part 1 only. The manuscript for Parts 2 and 3 is being reviewed and will be released for publication just as soon as possible.

FOR THE COMMITTEE ON THE ECONOMIC STATUS OF THE ENGINEER

I. MELVILLE STEIN, *Chairman*

* See page 6.

THIS MANUAL is sponsored by Engineers Joint Council, which consists of the Presidents, immediate Past-Presidents, and Secretaries of the following societies:

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American Institute of Electrical Engineers
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ERNEST J. STOCKING, Assistant Chief Examining & Personnel, Utilization Division, U. S. Civil Service Commission, Washington, D. C. (A.S.C.E).

A. CAMP STREAMER, Assistant to the President, Westinghouse Electric Corp., Pittsburgh, Pa. (A.I.E.E.)

SCOTT TURNER, New York, N. Y. (A.I.M.E.)

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E. P. YERKES, Engineer of Equipment, The Bell Telephone Company of Pennsylvania, Philadelphia, Pa. (A.I.E.E.)

LEWIS E. YOUNG, Pittsburgh, Pa. (A.I.M.E.)

The Committee on Collective Bargaining by Engineers in Professional Work consists of the following:

Chairman: E. P. YERKES, Engineer of Equipment, The Bell Telephone Company of Pennsylvania, Philadelphia, Pa. (A.I.E.E.)

JAMES M. CHURCH, Assistant Professor of Chemical Engineering, Columbia University, New York, N. Y. (A.I.Ch.E.)

CHARLES S. GOTWALS, Superintendent Plant No. 1, SKF Industries, Inc., Philadelphia, Pa. (A.S.M.E.)

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LEWIS E. YOUNG, Pittsburgh, Pa. (A.I.M.E.)

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A. CAMP STREAMER, Assistant to the President, Westinghouse Electric Corp., Pittsburgh, Pa.

BARTOW VAN NESS, JR., Chief Engineer, Safe Harbor Water Power Corp., Baltimore, Md.

INTRODUCTION

IN THE UNITED STATES, from the beginning of the factory system until sometime after the passage of the National Labor Relations Act, the great majority of industrial employees dealt with their employers as individuals in establishing wages, hours, and conditions of employment.

During this period the spirit of extreme individualism which dominated the frontier civilization of a century ago continued to prevail in the field of employer-employee relations.

Organized labor failed to secure or maintain a foothold in many industries or sections of industries. Prior to 1933, it had succeeded in the industries dependent upon hand skill and in the decentralized trades and industries consisting in a large measure of small or relatively small firms or corporations. Its greatest achievements had been in the building trades, in steam railroads and electric and street railways, in the clothing industries, in anthracite and bituminous coal mining, in printing and publishing, in theatres and music, and to a lesser extent in the glass, clay, and stone industries.

The transportation and building unions represented about one-half of the total union membership.[1] Generally speaking, it was a movement of wage earners, but it did embrace unions of clerical workers and certain professional employees, notably actors, musicians, and teachers.

After 1929 certain conditions and events brought about drastic changes in the employer-employee relationships of this country. Important among the factors which have accounted for these changes are (1) *the prolonged depression* which intensified the universal urge for economic security; (2) *the National Industrial Recovery Act of 1933* which, so far as the nonagricultural industries were concerned, established industrial codes that guaranteed employees the right to organize and bargain collectively, and that sought to augment purchasing power by raising wages and to increase employment by reducing hours of work;[2] (3) *social legislation* designed to provide greater income and security for employees through the establishment of minimum labor standards and various types of social insurances as well as assistance to the needy, (4) *the National Labor Relations Act of 1935* which protected the right of labor to organize and bargain collectively, (5) *the resulting growth in the membership and power of organized labor,* especially in the mass production industries, (6) *the split in the American Labor Movement,* and (7) *the shortage of manpower* occasioned by World War II.

When the National Industrial Recovery Act was passed in June 1933, some three million workers in the United States were associated with labor organizations whose jurisdiction extended beyond the scope of a single company—well over two-thirds of them being in unions affiliated with the American Federation of Labor; another million and a quarter employees belonged to plant-wide or company-wide unions; while the remainder—some twenty million industrial workers—formulated their terms and conditions of employment by means of individual bargaining.

The forces and conditions enumerated above threatened to disrupt many long-established employer-employee relationships. The adjustments which followed were accompanied with a large measure of industrial strife, which was to be expected inasmuch as the recovery legislation and the efforts of unions compressed into a few years far-reaching modifications in the relationships between employers and employed which in most countries took decades of gradual change.

In the years that followed the passage of the National Industrial Recovery Act and especially the enactment of the National Labor Relations Act, labor unions conducted intensive organizing campaigns which, aided by Federal agencies, in particular by the directives of the National War Labor Board on the maintenance of membership, were extraordinarily successful. At the close of 1945, "about 13.8 million workers were covered by written collective-bargaining agreements".[3]

During these years the character of the American Labor Movement underwent considerable change. This change was accentuated by the existence of two powerful competing national federations—the American Federation of Labor and the Congress of Industrial Organizations. Of real importance, also, was the United Mine Workers of America, which played

[1] Footnotes appear at the *end* of each section or chapter

a major role, first in the formation of the CIO, later as an independent competitor of the two leading federations of labor, and more recently as an affiliate of the A. F. of L. To retain or win leadership in the field, these organizations found it necessary to expand their jurisdiction and to increase their membership. Under aggressive leadership, the movement (which had been confined in the main to production workers) spread first to clerical workers and then to professional employees.

It cannot be assumed, however, that the growth of labor organizations among professional employees is due only to the activities of outside unions. A minority of engineers has shown an interest in collective bargaining through the medium of strong labor organizations. Several factors may account for this development.

In the first place, the number of professional men in industry has grown substantially during the last quarter of a century. It should be noted that their role is largely that of an employee rather than a consultant, and that in many companies large numbers are engaged on specialized aspects of engineering work. A minority of these employees has revealed a deep dissatisfaction with the limited character of their work, much of which involves "routine clerical, testing or other work which a competent semi-technical assistant could handle". Some of them are "generally or extremely dissatisfied" with their salaries and complain of the supervision they receive as well as the lighting, noise, and dirt on the job and the space allotted to them. Moreover, they resent the lack of opportunity to get ahead and the failure of management to keep them informed concerning company policies and other matters of interest and importance to professional employees.[4]

In the second place, the long depression of the thirties has made a substantial number of professional employees security minded. Large numbers of graduates of professional schools could not find jobs during these years, and the salaries paid to those who did, in many instances, reflected the then prevailing oversupply of professionally-trained employees. Unemployment was not confined to recent college graduates. A study of the engineering profession made by the Bureau of Labor Statistics disclosed that about one-third of the engineers were unemployed some time during the years 1929-1934.[5]

Important also has been the impact of the war upon the comparative salary status of professional employees. Differences in overtime earnings, in methods of payment, and, in some cases, differences in the increases of the base pay of hourly-rated and professional employees have placed the latter at a decided disadvantage. For these employees rising prices together with higher taxes have reduced the standard of living and impaired morale.

This combination of factors plus the prompt attention given by management to the wage demands and grievances of organized shop employees and the success attained by these workers appear to have made some professional employees wonder whether collective bargaining might not be a useful device for removing existing inequities and improving their economic status.

Scope and Purpose of this Manual

The demands upon professional employees to master and keep abreast with scientific theory and technological knowledge in their respective fields have become increasingly heavy. Most professional people have not had the time or the opportunity to keep informed of developments in the American Labor Movement or in legislation pertaining to labor organizations and collective bargaining.

Confronted with economic factors and conditions outside of their field of specialization and uncertain of the impact of recent developments in labor relations upon their professional status, many of them turned to their respective societies for advice and assistance. As we shall see later, a number of these societies established committees to study the problem, and some of them developed programs designed to further the interests of their members. The various studies and surveys undertaken by these societies disclosed a definite need for a source book on collective bargaining for professional employees. This volume has been prepared to meet that need.

Those who are responsible for its preparation have sought diligently to treat this controversial subject simply but adequately and as objectively as possible. In carrying out this task they have kept in mind the primary objectives of professional societies, namely, the advancement of the theory and technical knowledge of the science or art which its members practice as well as of the allied arts and sciences, and the maintenance of high professional standards among members.

The primary purpose of this volume (of which this is Part I) is to give professional employees a background against which they may interpret and appraise the current developments in the field of labor relations.

Part I: *The National Labor Relations Act and Professional Employees,* presents the essential features of the National Labor Relations Act, reviews professional society activities with respect to collective bargaining for professional employees, examines certain proposals to modify this Act, appraises the various courses of action which professional employees have taken under the Act, presents the advantages and disadvantages of the various types of labor organizations which are open to professional employees, and discusses the conditions that must be met, the steps that must be taken, and the responsibilities involved in establishing a labor organization for professional employees.

Part II: *Collective Bargaining, Mediation and Arbitration,* deals with the purpose and content of collective bargaining, the process of negotiating and living under a contract, and the nature and place of mediation and arbitration in the settlement of industrial disputes.

Part III treats with the objectives, structure and tactics of labor organizations. It presents a brief history of the American Labor Movement, examines the structure and functions of labor organizations, and portrays union organizing tactics and strike strategy and tactics.

The appendices include the National Labor Relations Act, copies of documents and forms pertaining to labor organizations and collective bargaining, a glossary of terms, a bibliography on labor relations and related material.

This manual has been prepared to give professional employees a knowledge of their rights and responsibilities under the National Labor Relations Act and to inform them about the theory and practice of labor organizations and collective bargaining as they function in business and industry. The decision to organize or not to organize and the choice of a bargaining agency and a bargaining unit, to the extent permitted by the National Labor Relations Act, rest with the professional employees themselves. The decision should be based on a knowledge of the facts of labor law and labor relations as well as on their personal preferences and convictions and the circumstances prevailing in a given situation.

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[1] See Wolman, Leo: *Growth of American Trade Unions, 1880 to 1923,* New York, 1924, pp. 86-91 and Report of the Committee on Recent Economic Changes of the President's Conference on Unemployment: *Recent Economic Changes in the United States,* 1929, Vol. II, pp. 479-481.

[2] Section 7(a) of the Act provided: "Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

[3] *Monthly Labor Review,* Bureau of Labor Statistics, U. S. Department of Labor, April 1946, p. 567.

[4] Based on (1) the findings of a recent questionnaire filled in by 1145 engineers who were employed in a large manufacturing company in the East, and (2) interviews with groups of engineers.

[5] Fraser, Andrew, Jr. and Hinrichs, A. F.: "Employment and Earnings in the Engineering Profession, 1929-1934", United States Bureau of Labor Statistics, Bulletin No. 682, p. ix, Washington, D. C., 1941.

Chapter I

THE NATIONAL LABOR RELATIONS ACT

EARLY IN 1935, a National Labor Relations Bill (S. 1958, 74th Congress, 1st session) was introduced in Congress. According to its sponsors the purpose of this Bill was (1) to remove the uncertainties which prevailed concerning the rights of employees and the obligations of employers with respect to labor organizations and collective bargaining, and (2) to establish effective machinery for the enforcement of these rights and obligations. It was not the intention of the framers of the Act, therefore, to add to the existing rights of employees but to have the Federal Government guarantee rights which the courts had long recognized as essential to the welfare of employees engaged in the production of goods and services. Both houses approved the Bill late in June. It was signed by the President on July 5, 1935.

1. *The Objectives of the Act*

The National Labor Relations Act, popularly known as the Wagner Act, does not purport to enunciate the broad principles and policies upon which a comprehensive code of industrial relations may be developed. It deals with the rights of employees and the acts of employers that interfere with the exercise of those rights. It lays down "unfair labor practices" in which employers may not engage and specifies certain basic rights which it guarantees to employees. The choice of objectives and means to be used in organizing and administering unions and in conducting collective bargaining is left to the employees or their agents subject to the restraints set up by civil and criminal law, local ordinances, or under certain conditions by injunction proceedings. The following statement of Senator Wagner, the sponsor of the Act in the Senate, is of interest in that it throws light on the intended scope of this legislation:[1]

> "We have not gone in this bill into the field of relationship between employer and employee. We have been dealing only with the right of the employee to engage in collective bargaining with his employer. If an employee threatens to burn the house of a fellow employee unless he joins his Union, there is ample provision of law to cover such a case. . . . That is a domain we have not entered into, because we are not dealing with it."

a. Public Policy as Stated in the Act

The Act declares that it is the public policy "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

b. Findings on Which Congressional Action was Based

Why did Congress believe it to be desirable to encourage collective bargaining and to guarantee labor full freedom of association and related rights?

The economic philosophy of Congress as expressed in the Act (Sec. 1) is, in essence, that the denial by employers of the right of employees to organize and the refusal by employers to bargain collectively cause serious disturbances in our national economy. These actions on the part of employers give rise to strikes and other forms of industrial unrest. Since they occur in the current of commerce, strikes burden or obstruct commerce by "impairing the efficiency, safety or operation of the instrumentalities of commerce" and by "materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce." Work stoppages, we are told, also cause a "diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce."

Interference with the employees' efforts to organize and the refusal to bargain collectively, say the sponsors of the Act, give rise to inequality of bargaining power between employees and employers, and this condition not only "substantially burdens and affects

the flow of commerce" but "tends to aggravate recurring business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of wage rates and working conditions within and between industries."

On the other hand, the framers of the Act assert, "experience has proved that protection by law of the right of employees to organize and bargain collectively" not only "safeguards commerce from injury, impairment, or interruption" but "promotes the flow of commerce by:

> removing certain recognized sources of industrial strife and unrest,
>
> encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by
>
> restoring equality of bargaining power between employers and employees."

2. *Industries Covered by the Act*

The Act applies to industries in which "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining" would obstruct interstate commerce by "(c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce." (Sec. 1)[2] The Act specifically excludes the following employees:

1. Agricultural laborers.
2. Workers subject to the Railway Labor Act.
3. Domestic servants.
4. Any individual employed by his parent or spouse.
5. Government employees including federal, state, county, and city employees.

It is apparent, therefore, that the Act applies to professional employees, including doctors and lawyers, unless covered by the above exemptions.

It should be noted that the Supreme Court in recent years has been broadening its concept of interstate commerce and that as a consequence federal regulation is being applied to an increasing number of industries.[3]

3. *The Rights Guaranteed to Employees*

Section 7 of the Act protects by law rights with respect to self-organization and collective bargaining which have long been recognized by the courts. The Act states that "employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection".

4. *The Unfair Labor Practices*

To safeguard the rights guaranteed in Section 7, the Act designated certain labor practices which it declares unfair and which it forbids employers to use. By employer is meant not only the owners of a business but "any person acting in the interest of any employer, directly or indirectly." From this category are omitted the Federal Government, any state or political subdivision thereof, any person subject to the Railway Labor Act as well as labor organizations (except when acting as an employer) or anyone acting in the capacity of officer or agent of a labor organization. (Sec. 2 (2)) This definition makes the employer responsible for any violations of the Act by his foremen or executives unless he "has adequately brought home to his employees the company's neutral position in organizational matters and it appears that everything reasonably possible has been done to enforce this neutrality."[4]

a. *Labor Practices Prohibited by the Act*

The Act (Sec. 8) declares it to be "an unfair labor practice for an employer:

> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, that subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.[5]
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, that nothing in this Act, . . . or in any other statute of the United States, shall preclude an employer from making an agreement, with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made.[6]
>
> (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)."

Many of the terms used in the above statement of unfair labor practices, such as to interfere with, restrain, coerce, dominate, and discriminate against, are quite vague, of a general nature and not defined in the Act. Actually they are the results or consequences of a course of action or of specific acts taken by employers or their agents. It was to be expected, therefore, that the *general* unfair labor practices listed in the Act would be supplemented, over a period of years, with *specific* unfair labor practices laid down by the Board as the result of its application of the provisions of Section 8 to concrete cases and particular situations.

b. *Acts of Employers Prohibited by the Board*

Some of the specific acts of management which the Board has declared unfair are:[7]

> "1. Advice by foremen not to join a union.
> 2. Malicious remarks about trade-unions uttered on the part of officials having authority to hire and fire.
> 3. The use of spies to report union activities and membership.
> 4. Direct employer influence over third parties, such as local police or citizens, to persuade workers against having anything to do with unions.
> 5. Solicitation of employees to return to work when such action is calculated to break the ranks of workers legitimately on strike.
> 6. Summoning employees to company offices for the purpose of demanding whether they approve of or belong to a union.
> 7. Hiring thugs to beat union members.
> 8. The use of propaganda to influence workers against their organization.
> 9. In general, any acts tending to arouse fear that loss of the job will result from union activity."

The above list is not intended to be complete but merely suggestive of the kind of action which, when engaged in by employers or persons acting in their interest, is held by the Board to be interference with the right of employees to organize unions for collective bargaining or other mutual aid or protection. Other specific labor practices prohibited by the Board will be considered in later chapters.

5. *Arrangements for Effecting Public Policy*

To ensure that the broad objectives of the Act will be achieved, provision is made for a National Labor Relations Board which is assigned the following major functions:

1. To prevent employers or their agents from engaging in "unfair labor practices".
2. To designate the bargaining unit which is to be used as a basis for employee representation in collective bargaining, and
3. To determine the representatives of employees whenever a dispute over representation arises.

6. *The National Labor Relations Board*

The National Labor Relations Board consists of three public members who are appointed by the President with the approval of the Senate. To facilitate the handling of charges of unfair labor practices and representation petitions, the Board maintains 22 regional offices. In his statement on signing the Act President Roosevelt pointed out that the Board would serve as an independent "quasi-judicial body" and not "as mediator or conciliator in labor disputes."

7. *The Procedure Followed in Handling Unfair Labor Practice Cases*

The Board becomes an interested party in cases involving unfair labor practices when an employee or a union files a charge with the director of one of the 22 regional offices, claiming that the employer has engaged in one or more of the unfair labor practices prohibited by the Act. The charge must be in writing and sworn to before a notary public or an agent of the Board. Charges are investigated by field examiners. If the charge has a basis in fact, a settlement of the points at issue is sought through conferences. If the charge lacks merit it will be withdrawn by the party making the charge or dismissed by the Regional Director, but an appeal from such a dismissal may be made to the National Board. If it appears that the law has been violated and the charge is not adjusted by agreement, the Regional Director normally issues a complaint. In cases involving policy

matters or unusual questions of law or of fact, he consults with the Board before taking action. If the Board finds that the circumstances warrant a hearing, it advises the Regional Director to issue a complaint and arrange for a hearing. If not, the charge is dismissed.

In the event a complaint is issued, the Regional Director designates a time and place for a public hearing which is held before a Trial Examiner designated by the Board. Notice of the hearing is sent to all interested parties. The hearings are open to the public.

The respondent is required to file an answer to the complaint within ten days, and this answer should "specifically admit or deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge. . . ."[8] If without knowledge, the respondent should state this fact in his complaint, and such a statement has the effect of a denial. If no answer is filed or if any allegation in the complaint is not specifically denied or explained, unless the respondent states in his answer that he is without knowledge, the Board is authorized to deem any or all unanswered allegations "to be admitted to be true."[9] All the parties at the hearing have the right to call witnesses, introduce testimony, cross-examine, and argue. The rules of evidence prevailing in courts of law or equity, however, are not controlling.

When the hearing is concluded, the Trial Examiner prepares his findings and recommendations on the record of the hearing. He may dismiss the case, order the employer to "cease and desist" labor practices that are unfair, or indicate the affirmative action the employer must take to comply with the law. Copies of this report, called the Intermediate Report, are sent to the Board in Washington and served upon the interested parties. If the employer complies with the recommendations the case is closed. Any subsequent action by the parties must be taken up with the Board itself.

Either party has the right to file a statement of exceptions to the Intermediate Report and to request an oral argument before the Board. Should this happen the case is carefully reviewed by the Board's legal staff (as is true of all cases formally handled by the Board) and, on the basis of all the facts and documents including the Trial Examiner's report and the oral arguments, the Board makes a decision. Whenever the employer fails to comply with that decision, the Board usually asks the Circuit Court of Appeals for a restraining order or injunction. The employer also may request a review of the Board's order, in which case the Circuit Court reviews the record of the case except the Board's findings as to the facts, which, if supported by evidence, are conclusive [Sec. 10(e)]. It should be noted, however, that the courts have interpreted the word "evidence" to mean substantial evidence.[10] The Circuit Court may dismiss, modify, or uphold the decision. If the Court sustains the Board's decision it issues an enforcement order which the employer must obey or be guilty of contempt of court. Both the employer and the Board, however, may appeal from the circuit courts to the Supreme Court.

The Act gives the Board power to subpoena witnesses and examine pertinent records and makes persons who refuse to obey subpoenas guilty of contempt of court. Lastly, it subjects any person who willfully interferes with any member of the Board or its agencies in carrying out his duty to a fine of not more than $5,000 or imprisonment for not more than one year, or both. It has not been necessary to enforce this provision of the Act.

8. *The Procedure Followed in Handling Representation Cases*

Before collective bargaining can begin the employees must designate representatives to deal with their employer. In most instances such representation is obtained through the medium of some form of labor organization. Establishing such an organization gives rise to problems which become more complicated when the ranks of the labor movement are split and rival organizations seek to enlarge their membership as rapidly as possible in order to improve their competitive position. In representation cases the Board must determine the appropriate unit for collective bargaining and ascertain whether the bargaining agency for that unit has a majority representation.[11] If the agency represents a majority of the workers in a particular unit, the employer must accept it as the exclusive representative of all the employees in the unit and bargain with it and all employees in the unit must abide by the results. Where competing unions exist, the Board must also determine which of several labor organizations, if any, the majority of the employees want. Disputes of this character are classified as *representation cases* and should not be confused with *complaint cases* which involve charges of employer violation of the provisions of the Act relating to unfair labor practices.

Distinction Between a Labor Organization and a Bargaining Unit

It is important to note that the Act makes a distinction between labor organizations and the bargaining unit. As defined in the Act (Sec. 2 (5)) a labor organization is "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." A bargaining unit, on the other hand, comprises those classifications of employees that are to be included for the purpose of collective bargaining and to be covered by the resulting contract. The definition of the bargaining unit may specify the classes of workers to be included or it may list those to be excluded. It may be a craft, plant, company or a sub-division thereof. (Sec. 9(b)) It is pertinent to note that the Board has designated a group of professional employees as an appropriate bargaining unit.[12]

The Board takes the position that any employee organization has complete freedom to define its membership qualifications as it sees fit as long as it keeps free of employer domination. In other words, the composition of a labor organization, even though it includes professional workers and foremen in its membership, is of no concern to the Board unless the organization is employer dominated. Employer initiated or dominated unions are illegal under the Act, and, therefore, have no standing before the Board.

The bargaining unit and the membership of a labor organization need not be coextensive and frequently are not. An employee organization need not bargain for its entire membership. Indeed it may bargain for employees entirely outside of its membership. As a matter of fact, collective bargaining for a particular group of employees may be done by an outside individual, a small committee, a union, or some other association. All that the Act requires is that the representative or representatives be of the employees' own choosing and be free of employer domination.

Determining the Bargaining Unit

Section 9(b) of the Act states that:

> "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the polices of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof.

Determination of the appropriate bargaining unit becomes necessary when the Board is asked to certify the representatives of employees inasmuch as such certification must be made in terms of a bargaining unit. The appropriate bargaining unit must also be agreed upon or determined by the Board in cases involving charges that an employer has refused to bargain collectively with the representatives of his employees. Such complaints are sustained only where the representatives have been designated by employees in a unit appropriate for bargaining purposes.

As the statute indicates the appropriate unit may be "the employer unit, craft unit, plant unit or subdivision thereof". Under this authorization the Board holds that "it must decide whether the appropriate unit in the case in question is industrial, including practically all the employees of a plant; semi-industrial, including a majority of the employees; multi-craft, including several groups of skilled workers; craft, including one group of skilled workers; or other group including only part of the employees. It must also decide whether the unit includes only one plant of one employer, several or all of the plants of a company, or a group of establishments of separate and independent companies".[13]

Conflicting claims as well as overlapping jurisdictions which go back over a period of years sometimes make the determination of a bargaining unit a difficult task. The Board has been unwilling to lay down a set of rules for resolving issues arising in disputes of this character. It takes the position that its duty under the Act is to decide "each case on the basis of all the facts and circumstances" and points out that this position is made necessary by "the complexity of modern industry, transportation, and communication, and the numerous and diverse forms which self-organization among employees has taken".[14] While it has been unwilling to establish rigid rules, it has set up a number of criteria which it

uses as a guide in the making of a decision. These criteria as stated by the Board are:[15]

1. The history, extent and type of organization of employees,
2. The history of their collective bargaining,
3. The history, extent and type of organization of employees in other plants of the same employer, or other employers in the same industry,
4. The skill, wages, work, and working conditions of the employees,
5. The desires of the employees,
6. The eligibility of the employees for membership in the union or unions involved.
7. The relationship between the unit or units proposed and the employer's organization, management, and operation, and
8. Whether an association of separate employers is in existence exercising employer functions, and having a history of collective bargaining on a multiple-employer basis.

No precise weight is given to any of the above criteria. In applying the above standards the Board seeks to bring together in a single unit those employees who have a community of interest which is likely to further harmonious organization and facilitate the aims of collective bargaining.

Cases requiring the determination of an appropriate bargaining unit fall into two categories: those in which all parties agree upon the scope and composition of the unit and those in which conflicting or overlapping units are favored by one or more of the parties to the dispute. Where the parties "agree upon the scope and composition of the unit, or a requested unit meets with no objection, the Board generally finds the agreed or requested unit to be appropriate". Objective standards of the kind listed above, however, "must be satisfied, otherwise the Board will not accept as appropriate the agreed or requested unit. But the fact that there is no dispute usually is indicative of the propriety of the unit."[16] In those cases in which there is only one organization involved and the organization has been designated by approximately 30 per cent of the employees in the bargaining unit, the Board usually will hold an election and, "generally finds appropriate a unit of a breadth clearly in accordance with the desires of employees, and their community of interest and extent of organization, if it is justified by the form of organization of the business . . . and permitted by the Act. Thus when the only labor organization is on a craft basis, craft units are ordinarily found appropriate, as are industrial units when the only organization is industrial".[17]

Where overlapping organizations are requested by rival unions, the Board attaches "great weight to the relative homogeneity of the units sought and the bargaining history in the plant or industry. Unless counterbalanced by other elements, bargaining history is often a controlling factor" provided a contract, which contains fixed terms and substantive provisions and is applicable to all employees in the bargaining unit, has been negotiated.[18]

In those situations in which considerations favoring a craft unit and those favoring a more comprehensive unit are of substantially equal weight, the Board frequently applies the Globe doctrine—so named because the principle was first enunciated in the case of the Globe Machine & Stamping Company and the Metal Polishers Union, Local No. 3, etc. The employees are permitted in a secret election to specify whether they want a separate craft unit or desire to be included with other employees in a larger bargaining unit. Usually if a majority of a given craft or related crafts vote for a craft unit, the Board rules that the craft shall be the bargaining unit, and if the majority vote for the larger bargaining unit, the Board denies separate representation. The wishes of the employees, however, are not always determinative because "the Board makes its findings of the appropriate unit upon the entire record, including the desires of the employees as reflected by the election results".[19]

As a rule, clerical and professional employees are not included in the same bargaining unit with production and maintenance employees in those instances in which objections are raised to such an arrangement. The Board, moreover, has definitely shown a willingness to exclude both professional employees and related technical employees, such as draftsmen, checkers, detailers, tracers and research assistants of various kinds from bargaining units of clerical and office workers. Professional and technical employees jointly have been excluded from heterogeneous bargaining units in well over a dozen cases. The Board has also shown a disposition to recognize "the appropriateness of units of professional employees". It is advisable, therefore, for professional employees who desire a separate bargaining unit to inform the Board of their wishes as soon as possible after the representation issue arises.

The rights of supervisory employees under the Act have been subject to conflicting interpretations on the part of the Board. In recent decisions it has declared that foremen are employees within the meaning of the Act and as such have the right to be placed in an appropriate bargaining unit and to join an auxiliary of and be represented in collective bargaining by a labor organization admitting to membership the rank and file employees working in the same establishment.[20]

The Determination of Employee Representatives

A number of situations make it necessary for the Board to ascertain the representatives of employees in a given bargaining unit. Such action is taken:

1. When the employer refuses to recognize a union as the exclusive representative for any reason but for the most part because (a) he has a doubt as to whether the representatives speak for the majority of the qualified employees, (b) he disapproves of the proposed bargaining unit, or (c) he desires to obtain formal Board determination of the composition of the bargaining unit or official certification of the bargaining agency.
2. When rival unions present conflicting claims with respect to the right to act as the representatives of the employees or because of a disagreement as to the classifications of employees that constitute an appropriate bargaining unit.

With respect to disputes of this nature the Board is required to investigate the issue or issues involved, determine the choice of employee representatives by secret ballot or by other suitable means, and to certify the exclusive representative should one be designated by a majority of the employees voting. (See 9(c))

Any person or labor organization acting on behalf of employees may petition the Board for an investigation of a claim to majority representation. Where two or more unions each claim to represent the same group of workers, the employer also may ask for an investigation and a determination of the issue.

A petition must be filed with the Regional Board in the area in which the dispute has arisen. A preliminary investigation is conducted by a Field Examiner who ascertains (1) whether the employer is subject to the Wagner Act, (2) whether a question of representation exists and, if so, (3) the appropriateness of the proposed bargaining unit. When the facts disclose that the case has no merit or the Board has no jurisdiction, the petition is either withdrawn by the filer or dismissed by the Regional Director. If the petition is dismissed, the filer may appeal to the National Labor Relations Board for a review of the action. Should the investigation, however, develop that the petition has merit, an attempt is made to secure an informal adjustment. Several procedures have been developed for this purpose.

Informal Arrangements. In those cases in which the interested parties agree to abide by the results of a check of the signatures on applications for union membership or other union records against the names on the payroll furnished by the company, the process of determination is known as a cross-check settlement. This procedure can only be used where an agreement has been obtained both as to the composition of the bargaining unit and the date to be used to ascretain who is eligible to vote as disclosed by reference to the company payroll. When the final disposition of the case is made by an agent of the Regional Office, it is called a *consent cross-check* settlement and when, at the insistence of either party, it is made by the National Board, it is referred to as a *stipulated cross-check* settlement.

Sometimes the interested parties agree upon both an appropriate bargaining unit and the payroll date to be used as the basis of eligibility but one of the parties is unwilling to have the issue determined by a cross-check. In such instances the Board's agent will usually recommend an election. If the parties voluntarily accept this procedure and agree to do so in writing, an election is conducted by a representative of the Board. When the agreed-upon election serves as the basis of an informal report by the Regional Director and the parties authorize him to make the final determination of the questions involved, the procedure is called a *consent election.* On the other hand, when the agreed-upon election becomes the basis of a formal decision by the Board itself and the final determination of the issue is left to the Board, the procedure is known as a *stipulated election.*

Of the 31,222 representation cases handled by the Board in the first 9 years of operation, about 70 per cent were settled by informal arrangements. Of the cases closed in the informal stages, 11 per cent were adjusted by consent cross-checks, 48 per cent by consent elections, four per cent by stipulated cross-checks and elections, and 37 per cent as the result of withdrawals or dismissals. The bulk of the representation petitions which were not withdrawn or dismissed were settled by elections.[21]

Ordered Elections. Sometimes the Board's agent cannot get acceptance of any of the informal ar-

since 1938. The second important trend is the marked increase in representation cases which means that there is a growing tendency to use elections instead of strikes to secure union recognition and the right to bargain.

10. *Act Declared Constitutional*

On April 12, 1937 the Supreme Court of the United States in a decision involving five separate cases sustained the constitutionality of the National Labor Relations Act. The majority of the Court held that the Act may be construed "so as to operate within the sphere of constitutional authority", that "the right to organize and select their representatives for lawful purposes" was a fundamental right, and that "discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority".[25]

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[1] Vol. 79, Congressional Record No. 102, pp. 7952, 7960. Quoted by Feller and Hurwitz: *How to Deal with Organized Labor*, p. 199. Alexander Publishing Company, Inc., New York, 1937.

[2] The definitions of "commerce" and "affecting commerce" contained in the Act may help to clarify the meaning of "interstate commerce".

> Sec. 2 (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.
>
> Sec. 2 (7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

[3] For a discussion of the changing concept of interstate commerce see Feller and Hurwitz, op. cit., pp. 204 to 219.

[4] Ninth Annual Report of the National Labor Relations Board, Fiscal Year ended June 30, 1944, U. S. Government Printing Office, Washington, D. C., 1944, p. 37.

[5] Section 6(a) gives the Board authority to make, amend, and rescind rules and regulations necessary to carry out the provisions of the Act.

[6] Section 9(a) sets forth the conditions under which the representatives of employees in an appropriate bargaining unit shall become the exclusive representatives of all employees in such unit for purposes of collective bargaining.

[7] Quoted from *What Workers and Employers Should Know About the National Labor Relations Act* by Edwin S. Smith, a former member of the Board. Reprint from Labor Information Bulletin, Bureau of Labor Statistics, U. S. Department of Labor, June 1937 (Revised June 1939).

[8] National Labor Relations Board: *Rules and Regulations*, Series 4, Effective September 11, 1946. U. S. Government Printing Office, Washington, 1946, p. 4.

[9] *Ibid.*

[10] For the standards of judicial review of Board Findings as enunciated by the Supreme Court, see Medo Photo Supply Corporation v. NLRB 645 c.t. 30, and cases referred to therein. See also Ninth Annual Report of the NLRB, Fiscal Year Ended June 30, 1944, pp. 51, 52.

[11] Dr. William M. Leiserson has pointed out that "if a representative is to be chosen, he must have an election district which is his constituency. But the law doesn't establish election districts. Therefore, the Board must define the district in every case, and that is called the bargaining unit."

[12] It has permitted professional employees to express their desires for a separate bargaining unit or for a more comprehensive unit including also technical and sometimes non-technical employees in cases involving the Aluminum Company of America, the General Electric Company, the Lockheed Aircraft Corporation, the Radio Corporation of America, the Shell Development Company and the Standard Oil Company of Indiana. It should not be assumed, however, that certification will be based solely on the desires of professional employees. See the discussion of bargaining units in Chapter VI, pp. 47 to 50.

[13] Seventh Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1942, U. S. Government Printing Office, Washington, D. C., 1943, p. 59.

[14] *Ibid.*, p. 59.

[15] Eighth Annual Report of the National Labor Relations Board, 1943 (Fiscal Year), U. S. Government Printing Office, Washington, D. C., 1944, p. 53.

[16] Ninth Annual Report of the National Labor Relations Board, 1944, fiscal year, p. 33.

[17] Seventh Annual Report of the National Labor Relations Board, 1942, fiscal year, p. 60.

[18] Ninth Annual Report of the National Labor Relations Board, 1944, fiscal year, p. 34.

[19] Ninth Annual Report of the National Labor Relations Board, 1944, fiscal year, p. 34.

[20] For discussion of the status of supervisory employees see Chapter III, pp. 27 to 28 inclusive and footnote 4.

[21] Ninth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1944, U. S. Government Printing Office, Washington, D. C., p. 11.

[22] Ninth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1944, U. S. Government Printing Office, Washington, D. C., 1944, p. 28.

[23] Series 4 (49 Stat. 449), Effective September 11, 1946, pp. 23 to 25.

[24] Annual reports of the National Labor Relations Board, especially those for 1942 (p. 58) and 1944 (p. 32).

[25] Jones & Laughlin Steel Corporation Case. The other cases were the Washington, Virginia and Maryland Couch Company Case, the Fruehauf Trailer Company Case, the Associated Press Case, and Friedman-Harry Marks Clothing Company Case.

Chapter II

WHAT THE PROFESSIONAL SOCIETIES HAVE DONE AND ARE DOING

PROFESSIONAL SOCIETIES have a primary interest not only in advancing the theory and practice of the sciences or arts in which their members have acquired a special competence but in maintaining a high professional standing among their members.

Any legislation which might affect the status of professional employees becomes of necessity a matter of real concern to these societies. That concern was augmented (1) by a persistent effort to bring architects, chemists, engineers, and other professional employees into heterogeneous labor organizations comprising both professional and non-professional employees and (2) by the request of members for guidance in dealing with the situation.

Confronted with a problem which fell outside the scope of their normal fields of activity, a number of societies appointed committees to study the issues involved, and, in some instances, to formulate programs which would help their members to obtain the type of employee-employer relations they desire.

A brief summary of the activities of these societies is an inherent part of any discussion of collective bargaining for professional employees and should be read by those who desire an understanding of the problems confronting societies which desire to give assistance and guidance to their members.

THE ACTIVITIES OF SOCIETIES ASSOCIATED WITH ENGINEERS JOINT COUNCIL

Five professional societies are represented in Engineers Joint Council. Through their presidents, immediate past presidents, and their secretaries, they are studying common problems confronting their societies and exploring ways and means of coordinating their society activities. An examination of the action taken by each of these societies with respect to labor organizations and collective bargaining for professional employees follows:

The American Society of Civil Engineers[1]

As early as 1937 the American Society of Civil Engineers appointed a Committee on Unionization. After a preliminary survey the Committee recommended (1) that the Society refrain from seeking to amend the National Labor Relations Act for the purpose of excluding professional employees, (2) that it attempt to secure an amendment, if necessary, which would clarify the position of professional and subprofessional men under the Act, (3) that it stand ready to cooperate with other Founder Societies, or with state and national professional societies, in the establishment of temporary or permanent agencies to represent engineers in collective action in a dignified, professional manner whenever necessary, and (4) that, to minimize the need for collective action by engineers as well as to assist its members in establishing and maintaining adequate and reasonable uniform compensation for the several grades of engineering employment, the Society should adopt a schedule of grades and minimum compensation.

The increasing interest in collective bargaining for professional employees, as reflected by the growth of unionization among engineers and the number of disputes involving professional employees submitted to the National Labor Relations Board for determination, led the Society in October 1941 to change the name of the Committee on Unionization to Committee on Employment Conditions and broaden its functions. It also appointed a full-time staff member to assist the new Committee in its work. The Committee carried on its investigations, including a nationwide survey of collective bargaining among professional employees[2], and placed itself at the service of its employee and employer members on all matters relating to employment conditions, unionization, and collective bargaining. In July 1943, the Committee published a report which analyzed existing laws and summarized important decisions and rulings of Federal agencies relating to employment conditions and collective bargaining.[3]

As a result of its study of the legal aspects of collective bargaining, the findings of its survey of the experience of professional employees with labor organizations and collective bargaining, and the diffi-

culties which some of its members encountered in securing separate bargaining units in certain of the early cases coming before the N.L.R.B., the Committee in October, 1943 recommended that the Society institute bargaining facilities for civil engineers. In order to accomplish this function, the Committee recommended the adoption of the following three-phase program as necessary in order to implement that objective; (1) that the constitutions of the Local Sections of the Society be amended to establish bargaining groups within the geographical limits of each Local Section area, (2) that assistance be given these groups by the employment of four field representatives, one to be operative in each of the four Zones, and (3) that an adequate definition of professionally-minded employees be adopted as the basis for the collective bargaining groups proposed.

Experience under the plan, which had been adopted by the A.S.C.E. Board of Direction on October 11, 1941, led to certain interpretations of the original amendments to the constitution of Local Sections. The recommended procedure now is for the Local Section's Board of Directors to appoint an "Interim Committee on Employment Conditions" composed of employee members of the Section. This Committee assists in the formation of a "group of professional engineering employees"—a voluntary association not only of employee members of the American Society of Civil Engineers, but of similar members in other branches of the engineering profession who reside or work in the area in which the Local Section has jurisdiction. Membership in the "group" is not confined to engineers who are employees of a single employer. The Interim Committee on Employment Conditions is authorized to prepare a roster of professional engineering employees eligible for membership in the "group", to collect dues, call a meeting of eligible persons and designate a Chairman and Secretary, who are to serve at the organization meeting of the "group". The Interim Committee on Employment Conditions appointed by the Local Section's Board of Directors ceases to function as soon as the "group" elects its own "Committee on Employment Conditions" from among its members.

Working through its own administrative body, the Committee on Employment Conditions, entirely independent of the A.S.C.E. Local Section, the "group" assists in the formation of "units" appropriate for the purpose of collective bargaining which are composed of professional engineers "who have been accredited by their fellows as members of a professionally-minded homogeneous group". It is expected that the "group" will "act as a body of men sympathetic to the preservation of their professional status through collective bargaining procedures by "Units" constituting a majority of those professional engineering employees employed by a specific employer".[4]

The recommendations of the A.S.C.E. Committee on Employment Conditions have been favorably received by the membership of many of the Local Sections. By April 1944, about 87 per cent of the members in 27 Local Sections had voted in favor of them. In the fall of that year, the A.S.C.E. Board of Direction concluded that the Local Sections could appoint an "Interim Committee on Employment Conditions" to assist in the formation of a "group of professional engineering employees" without amending the Constitution of the Local Section.[5] As of February 1945, 30 of 64 Local Sections had amended their constitutions in accordance with the Committee's recommendations and two other Local Sections had set up "Interim Committees on Employment Conditions" without modification of their constitutions.

In a statement to a Subcommittee of the House Labor Committee on July 19, 1946, the Society proposed three specific points of fundamental importance to professional engineers for consideration in drafting new labor laws:[6] "(1) any group of professional employees, having a community of interest and who wish to bargain collectively, should be guaranteed the right to form and administer their own bargaining unit and be permitted free choice of their representatives to negotiate with their employer, (2) no professional employees, or group of employees, desiring to undertake collective bargaining with an employer, should be forced to affiliate with, or become members of, any bargaining group which includes non-professional employees, or to submit to representation by such a group or its designated agents, and (3) no professional employee should be forced, against his desires, to join any labor organization as a condition of his employment or to sacrifice his right to individual, personal relations with his employer in matters of employment conditions."

Recognizing that existing labor laws as administered are not in accord with the foregoing three fundamental principles, it is the policy of the American Society of Civil Engineers to exert every effort toward modification of existing labor laws and their administration to the end that the foregoing principles shall prevail. Also under existing conditions the expressed policy of the Society is to give all practicable assistance to its members in the field of collective bargaining insofar as funds, staff facilities, and legal limitations will permit.

The American Society of Civil Engineers is participating in and supporting the work of the Committee on the Economic Status of the Engineer of Engineers Joint Council. This Committee, among other activities, is engaged in a study of collective bargaining and the formulation of a policy on labor law and labor legislation for the guidance of the Council and the cooperating societies. A major objective of the Committee is the development of a common approach to the problems of collective bargaining for professional employees to which all participating societies will want to subscribe.

The American Institute of Mining and Metallurgical Engineers

The following statement has been submitted by the Secretary of the American Institute of Mining and Metallurgical Engineers:

> "The American Institute of Mining and Metallurgical Engineers has taken the position that as an organization it cannot properly instigate, promote, or sponsor the establishment of collective bargaining groups or units, if, for no other reason, simply because a substantial proportion of its members are either employers themselves or are definitely part of 'management'. It does not regard membership in a union by a professional engineer as being in any sense reprehensible; and believes that participation by an engineer-employee in organized collective bargaining should be decided by the individual employee on the basis of his own situation at a particular time and place.
>
> "Through its magazine 'Mining and Metallurgy' it has published a great deal of factual information regarding collective bargaining; and the views on the subject—pro and con—of dozens of its members. It is an active participant in, and supporter of, the work of the Committee on the Economic Status of the Engineer of Engineers Joint Council".

The American Society of Mechanical Engineers

In 1930 the American Society of Mechanical Engineers began the first of a number of factual studies dealing with the economic status of the engineer. During the period 1937 to 1940, unionization and the problems of collective bargaining, to the extent that they dealt with professional employees, were made matters of intensive study and reported in *Mechanical Engineering*, the journal of the Society.[7] The Society, which played an important role in the formation of the Committee on the Economic Status of the Engineer, is actively participating in and supporting the work of that Committee.

The American Institute of Electrical Engineers

The impact of unionization and collective bargaining on professional engineers led the Board of Directors of the Institute to authorize the appointment of a Committee on Collective Bargaining and Related Matters on January 27, 1944. This Committee made a careful study of the National Labor Relations Act insofar as it affected professional employees as well as the factors, conditions, and issues involved, and recommended that the Institute adopt the following tentative policies and procedures:[8]

1. Prepare a manual for members representing the essential facts about the American Labor Movement and the National Labor Relations Act (Wagner Act) and setting forth (1) what the Institute may and may not do and (2) the courses of action that are open to its members.
2. Seek the establishment of a joint committee composed of representatives of the various engineering societies which would serve as a clearing center for these associations and, in those cases in which two or more societies desire and have the right to intervene as a friend of the court on behalf of their members, make arrangements for a common counsel.*
3. Establish a continuing committee on collective bargaining and related matters in order that the Institute may be kept informed about new developments concerning unionization and collective bargaining.
4. Refrain from establishing collective-bargaining agencies for engineers which are directly or indirectly associated with the Institute or its Sections, and from assisting in any way in the actual formation or administration of a labor organization for engineers.

* —The committee has been informed that the Institute generally will have little opportunity to intervene as a friend of the court in labor cases involving engineers. It believes, however, that such action may be both possible and desirable under certain circumstances. A joint committee would enable each society to join with other engineering societies, to act alone, or to refrain from any action depending upon the issues and circumstances in a given case.

The above recommendations were tentatively approved by the Board of Directors of the Institute on May 29, 1945, pending further consideration by the membership as a whole. The report, including its recommendations, was forwarded to the Committee

on the Economic Status of the Engineer for its examination and comments. Without attempting to pass judgment on its findings or recommendations this Committee recommended that the A.I.E.E. tentative report be published promptly in the monthly publications of the various professional engineering societies in order that comments and criticisms from engineers in the various branches of the profession would be made available.

The Institute also is participating and supporting all other activities of the Committee on the Economic Status of the Engineer of Engineers Joint Council.

The American Institute of Chemical Engineers

The American Institute of Chemical Engineers has not announced an official organization policy pertaining to collective bargaining for its members. That it has an interest in these matters is indicated by its participation in and support of the work of the Committee on the Economic Status of the Engineer of Engineers Joint Council.

The Activities of Other Societies

There are a number of other societies which have taken a keen interest in collective bargaining for professional employees and the rights of these employees under the National Labor Relations Act. Their activities are briefly summarized below:

The American Association of Engineers

The American Association of Engineers has actively opposed unionization of professional engineers since its inception. In the period 1915-1919, when technical employees of the railroads were being absorbed in the Chicago Local (#14) of the draftsmen's union of the American Federation of Labor, "the American Association of Engineers counter-organized, forming 'railway sections' all over the nation which were virtually chapters of the Association, and represented these groups before the U. S. Railway Wage Board."

The Association has refused to convert itself into a "labor organization, capable within the meaning of the Act (NLRA), of representing organized engineers in collective bargaining". Instead it "organized in 1937 a National Mediation Committee which was originally intended to do these things":[9]

> To review the work of the National Labor Relations Board in reconnaissance reports.
>
> To assist members involved in representation proceedings.
>
> To advise members as to how they may attempt to preserve their autonomy with respect to collective bargaining.
>
> To assist members who form their own organizations to draw up contracts.
>
> To serve as mediators in disputes involving members of the Association.
>
> To suggest arbitrators when requested to do so.

In 1944 the Association published *Technologists' Stake in the Wagner Act*.[10] This volume examines the impact of the National Labor Relations Act on scientific and engineering employees and summarizes the findings of the National Mediation Committee which for seven years had made a careful study of the decisions of the National Labor Relations Board relating to the status of professional employees. In December 1944 the National Mediation Committee recommended to the Board of Directors of the Association that it sponsor an attempt to secure an amendment of the National Labor Relations Act which would (1) authorize a federal agency to classify all positions in the field of technology and related mechanical arts, trades, and crafts, (2) require the National Labor Relations Board to accept this classification as the standard to be used in distinguishing between professional and non-professional employees, and (3) to make it compulsory for the Board, in determining an appropriate bargaining unit, to permit professional employees "to waive or exercise rights of self-organization and designation of representatives, in fully autonomous units, restricted to and controlled by technologists".

The Association approved the recommendations and circulated a petition for the signature of persons in the professions having an interest in the matter. The petition urged the Senate Committee on Education and Labor (1) to recommend to the Senate the inclusion of the above recommendations as amendments to the Ball, Burton, Hatch Bill (S-1171) or (2) to propose such an amendment to the National Labor Relations Act should Congress reject the Ball, Burton, Hatch Bill.

The National Society of Professional Engineers[11]

Because "the Society is 'composed of employers and employees alike, the legal qualification as professional engineering being the basis upon which membership is predicated, it cannot act as a Collective Bargaining Agency. Nor does it aspire to such a role.[12] Particular attention has been directed, however, toward the unwholesome condition arising from engineer employees being required to join labor unions which contained many divergent elements and did not adequately represent the professional viewpoint."

In 1937, the Society "favored an amendment to the National Labor Relations Act which would exclude professional employees from the requirement to be represented by any non-professional organization for collective bargaining."

In a statement to a Subcommittee of the House Labor Committee in July 1946, the Society said "that it believes that 'No engineering employee or group of employees should be required to affiliate or be included in a bargaining unit whose principal representation is composed of other workers with divergent interests and background.'

" 'Any group of engineering employees should have full freedom to form their own bargaining agency; should have complete and total control over its policies and actions; and should have choice of their own representatives in whatever negotiations they desire with their employer.' "

The policy of the Society is "to report, analyze, and recommend as changes in existing labor legislation are proposed. The objective of this effort is to insure to the professional engineer the right to advance his status through an agency of his own choosing."

The American Chemical Society[13]

Although the matter of collective bargaining for professional employees had been given close attention by the American Chemical Society for some time, no official action was taken by the Society until September 1941. At that time the Board of Directors announced (1) that the Society would take no stand against collective bargaining for professional employees provided "such bargaining is not controlled by non-professional groups" and "the bargaining unit is composed exclusively of professional men", (2) that it was "unalterably opposed to the forcible inclusion of professional men in bargaining units dominated and controlled by non-professional employees", (3) that it was "opposed to affiliation with any organization that conditions promotion primarily on the basis of 'seniority', or that insists that they join any labor organization where they would be in a minority", and (4) that it would "bend every effort to maintain for all its members the 'right to work' and the 'right to employment and promotion' on the basis of worth and merit".

Shortly thereafter, the Board had an opportunity to apply its statement of principle. In the laboratory of the Shell Development Company at Emeryville, California, organizers of the Federation of Architects, Engineers, Chemists and Technicians, CIO, set out to include professional employees in their organization, in which the non-professional workers outnumbered the professional employees. The latter vigorously protested, and with the help of a competent legal counsel provided by the American Chemical Society, were able to secure a bargaining unit of professional employees for the purpose of elections and eventually to prevent their inclusion in a heterogeneous bargaining unit.[14]

The Society has consistently taken the position that, inasmuch as its membership includes both individuals and corporations and the individual membership comprises employers as well as employees, it as well as its local sections are barred from acting for its employee members as a representative for purposes of collective bargaining. It has adopted definitions of "professional employee", "chemical interne", and "technician", and has published a report on "Collective Bargaining for Professional Employees".[15]

The American Institute of Chemists

The American Institute of Chemists, an organization concerned with the "business problems, public relations and civic responsibilities" of chemists, has for some time been interested in the professional and economic status of the chemist. It has recently published a report on the relationship between employer chemists and their employees.[16] The Institute has also given consideration to certain developments pertaining to collective bargaining for professional employees but as yet has not formulated an official statement of its position on this aspect of employee-employer relations. However, the Institute has given much consideration to the licensure of chemists.

Committee on the Economic Status of the Engineer[17]

Early in 1944 representatives of the American Society of Mechanical Engineers and the American Institute of Electrical Engineers began to explore ways and means of promoting the economic welfare

of professional engineers. Later, representatives of the American Society of Civil Engineers joined in these discussions. As a result of these meetings, there was established a joint Committee on the Economic Status of the Engineer, whose function it was to make studies and to conduct surveys when deemed necessary. Somewhat later, the American Institute of Mining and Metallurigcal Engineers and the American Institute of Chemical Engineers joined the Committee. More recently representatives of the National Society of Professional Engineers have also joined in the work of this Committee. This joint Committee is now a comittee of Engineers Joint Council.

The Committee on the Economic Status of the Engineer, at present, has three survey committees. The Committee for Survey of Practice Regarding Engineering Graduates is engaged in ascertaining, from a representative group of industrial employers, their "policies and attitudes pertaining to the selection, training, placement, advancement, guidance and professional activities of graduate engineering employees". A Committee on Survey of the Engineering Profession has undertaken "to obtain directly, through a questionnaire to about 100,000 member engineers, specific facts which reflect the economic status of engineers". Its survey will obtain factual information "covering educational levels, years engaged in practice, branch of engineering, field of specialization, annual income and similar information". A Committee on Collective Bargaining by Engineers in Professional Work is studying "the problem of collective bargaining as it affects, or may affect, engineers in professional work and in training for professional work".

The functions assigned to the Committee on the Economic Status of the Engineer "are solely investigational and advisory, and any action that might be taken by any of the cooperating societies, as a result of the studies made by the Committee, is a matter to be decided upon eventually by the Boards of Directors of the individual societies". Working through its Committee on Collective Bargaining by Engineers in Professional Work, the Committee, at the request of Engineers Joint Council, has prepared and submitted a policy for the guidance of the member societies in matters pertaining to labor laws and labor legislation.

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[1] Sources:
—"Collective Bargaining—A Historical Review", *Civil Engineering*, July 1944.
—Boughton, V. T.: "Where We Stand on Collective Bargaining for Engineers", *Engineering News-Record*, Feb. 8, 1945.
—"Activities of the Committee on Employment Conditions, 1937 to the Present", *Civil Eng'g.*, Feb. 1944.
—"Engineers Protest Affiliation with Sub-Professionals", *Civil Engineering*, July 1943.
—"Collective Bargaining for Professional Engineers", *Civil Engineering*, Nov. 1943.
—"Supplementary Recommendations Issued by Committee on Employment Conditions", *Civil Engineering*, May 1944.
—"Collective Bargaining Setup Modified by A.S.C.E. Board," *Engineering News-Record*, Oct. 19, 1944.

[2] The findings of this survey were published under the title *Self-Protective Groups of Engineering Employees*, July 1942.

[3] *The Engineer and Collective Bargaining*, July 1943.

[4] "Supplementary Recommendations Issued by the Committee on Employment Conditions", *Civil Engineering*, May 1944, pp. 214-217.

[5] "Collective Bargaining Setup Modified by A.S.C.E. Board", *Engineering News-Record*, Oct. 19, 1944.

[6] "Society Asks Freedom for Professional Men in Collective Bargaining Process", *Civil Engineering*, August 1946.

[7] Herron, James H.: "Unionization of Engineers", *Mechanical Engineering*, Nov. 1939, pp. 788-789, 822; and discussion, *Mechanical Engineering* (1940) pp. 67-72, 155-160, 243-246, 328-331, 411-412, 478-481, 562-565, 827-828; also 1941, pp. 475-476.

[8] See tentative "Report of the Committee on Collective Bargaining and Related Matters", American Institute of Electrical Engineers, *Electrical Engineering*, July 1945.

[9] From statement prepared for the Committee by M. E. McIver, National Secretary of A.A.E. See also *Professional Engineer*, April 1934, pp. 9-12 and 12-18.

[10] Prepared by M. E. McIver, H. A. Wagner, and M. P. McGirr.

[11] Based on a statement of the Society's policy supplied by Paul H. Robbins, Executive Director.

[12] *The American Engineer*, the official publication of the National Society of Professional Engineers, March 1944.

[13] Sources:
—*Collective Bargaining for Professional Employees*, Report of the American Chemical Society, January 15, 1944.
—"Employer-Employee Relationships for Professional Chemists as Recommended by the American Chemical Society", *News Edition*, Sept. 1941, pp. 1014-1015.
—In the Matter of Shell Development Company, R-3245, January 13, 1942. 38 NLRB 192 and NLRB 1196. Also R-4791, February 13, 1943, 47 NLRB 507.
—Wagner, H. A.: "The Wagner Act and the Engineer", *Professional Engineer*, June 1945, p. 38.

[14] In 1943, the Chemical Workers Union, No. 22606, A. F. of L., sought to organize the professional employees of the Monsanto Chemical Company at its plant in Everett, Mass. The chemists assisted by the Society were able to prevent inclusion in a heterogeneous labor organization. (Case No. 1-R-1626).

[15] Prepared by Elisha Hanson and published January 1944.

[16] *The Employed Chemist and His Employer*, a report of the Committee on Employer-Employee Relationships which was published in *The Chemist*, Vol. XXII, Nos. 9, 10.

[17] Based on a statement published by the Committee on the Economic Status of the Engineer, March 27, 1946.

Chapter III

AN EXAMINATION OF PROPOSALS MADE BY PROFESSIONAL EMPLOYEES TO MODIFY THE WAGNER ACT

DISTURBED by the efforts of labor organizations to have them included in bargaining units and bargaining agencies along with sub-professional and non-professional employees, professional employees, and sometimes their societies, have suggested some revision of the National Labor Relations Act in the interest of preserving professional status. It seems advisable to examine these proposals.

Five legislative proposals have been suggested. They may be stated as follows:

1. Exempt professional employees from the provisions of the National Labor Relations Act.
2. Establish a separate tribunal for dealing with the representation and bargaining rights of professional employees.
3. Exclude professional employees from heterogeneous bargaining groups and bargaining units.
4. Allow professional employees to waive their rights to bargain collectively.
5. Require the National Labor Relations Board to permit professional groups of employees to decide for themselves by majority vote the bargaining unit in which they shall be included as well as the bargaining agency that shall represent them.

Each of these proposals will be analyzed to determine the extent to which it would enable professional employees to attain their objectives.

Seek Legislation Which Would Exempt Professional Employees from the Provisions of the N.L.R.A.

Exemption of professional employees from the provisions of the National Relations Act does not seem a promising solution of the problems facing professional employees. The Act applies to all employees working in establishments in or affecting interstate commerce. Probably it would be very difficult to justify exemption of professional employees, especially since some of them might protest such action.[1] It has been pointed out that even if this objective could be achieved a problem would still remain. Labor organizations still could and probably would accept professional employees as members, and nothing in the National Labor Relations Act would preclude such action even if professional employees were excluded from the provisions of the Act. Moreover, in those instances in which professional employees believe they need a bargaining agency to protect their interest and the employer refuses recognition, the bargaining agency for the professional employees might have to resort to strikes to obtain recognition since the exclusion of professional employees from the National Labor Relations Act would not permit certification by means of an election under the supervision of the National Labor Relations Board.

The professional employees would be in exactly the same position that the foremen found themselves following the Maryland Drydock decision.[2] At that time the National Labor Relations Board held that, except in industries where a history of collective bargaining for supervisors had prevailed, it would not establish a bargaining unit for foremen despite the fact that supervisors have the same bargaining rights as other employees. In support of this decision, the majority of the Board stated that "we are of the opinion that in the present stage of administration and employee-organization, the establishment of bargaining units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the Act".

Following this decision, a wave of foremen's strikes for the purpose of forcing recognition by employers occurred. As a result foremen, through their organization (The Foreman's Association of America), obtained recognition and a union agreement in certain establishments.[3] To clarify the situation, the National Labor Relations Board found it necessary to hold a hearing in Detroit in 1944 for the purpose of reconsidering its position on the foreman question and of deciding whether they were entitled to all the rights that other employees enjoyed under the National Labor Relations Act. Thereafter, the Board, in a series of decisions, reversed the position it had taken in the Maryland Drydock Company case. It declared

that not only are foremen employees within the meaning of the Act but (1) that as employees they are entitled to be placed in an appropriate bargaining unit and (2) that they may join an auxiliary of, and be represented in collective bargaining by, a labor organization admitting to membership the rank and file employees working in the same establishment.[4]

Lastly, the fact that groups of professional employees now have the right to seek certification whenever such a course of action seems desirable gives them, as individuals or as a group, a potential bargaining power with their employers which many of these employees might not want to surrender.

In view of the foregoing considerations, the seeking of legislature changes, which would exempt professional employees from the provisions of the National Labor Relations Act, would not seem to be a promising solution.

Seek Legislation Which Would Establish a Separate Tribunal for Dealing With the Representation and Bargaining Rights of Professional Employees

This approach to the problem was suggested to the Canadian Wartime Labour Relations Board by a committee representing 14 professional organizations. This Board was created under the Canadian Wartime Labour Relations Order-in-Council (P.C. 1003) a set of regulations passed in February 1944 to protect Canadian employees in the exercise of their right to form labor organizations and to bargain collectively. Several weeks after these regulations went into effect, the Committee asked the Board to exclude professional employees from them for a six-month period in order that it may have time to consider their status under the Order.

At the end of the period the Committee reported that a poll of their membership indicated by a very substantial majority that professional employees were opposed to being included in bargaining units made up largely of non-professional personnel and wanted their own agency for collective bargaining. They recommended that a new Order-in-Council be passed which would establish a Separate national board for professional employees only and grant them the right to be included in bargaining units of professional employees even though they previously had been included in heterogeneous bargaining units. After conducting hearings the Board refused to establish a separate labor code for professional employees but placed them under a special section of the original Order-in-Council and provided that they be dealt with separately for a period of six months.

Order-in-Council No. 1003 was war legislation. This wartime measure was extended to December 31, 1946 under the National Emergency Transition Powers Act passed by the Canadian House of Commons on December 7, 1945.[5] At its nullification, legislation concerning the status of the engineer with respect to self-organization and collective bargaining reverted to the individual provinces.

A revision of the National Labor Relations Act which would bring about a separate labor tribunal for professional employees in all likelihood would be difficult to obtain. It is interesting to note that the Canadian Wartime Labour Relations Board refused to establish a separate code for professional employees because of the expense involved. It should also be noted that if the National Labor Relations Board made an exception in the case of professional employees, it would have no assurance that similar requests would not be raised by other groups of employees. Other courses of action would seem to have a better chance of obtaining Congressional approval.

Seek Legislation Which Would Exclude Professional Employees from Heterogeneous Bargaining Units

Instead of trying to exclude employees engaged in professional work from the provisions of the National Labor Relations Act it has been suggested that an attempt be made to modify the Act so as to place professional employees in a separate category for purposes of collective bargaining. Such a modification would make professional employees ineligible for inclusion in bargaining units of non-professional employees, but would ensure them the right under the Act to be placed in bargaining units of professional employees and to be represented by representatives of their own choosing. Adoption of this proposal would make it impossible for professional employees to be represented by non-professional employees or by representatives chosen by a group in which non-professional employees predominated. At the same time it would retain for them the right to bargain collectively as guaranteed to other employees. This arrangement may well be more acceptable to many professional employees than the proposal to exempt them from the provisions of the Wagner Act. It probably would be less difficult to attain than a separate tribunal for professional employees.

Legislation of this nature, however, would require Congress to modify one of the basic provisions of the Act, namely, that the bargaining *unit* is a matter for Board determination, the bargaining *agency* being a matter for employee determination.

The proposal to exclude professional employees from heterogeneous bargaining units and agencies might be criticized on the grounds that it would restrict these employees in the choice of a bargaining agency and, in those situations where the National Labor Relations Board applies the Globe Doctrine, in the choice of a bargaining unit. There is some evidence that under certain conditions professional employees may want to be included in a heterogeneous bargaining unit and bargaining agency, as for example in those situations in which all the employees of a single company wish to establish a labor organization of company employees only. Also such a provision would not appeal to those who feel that the determination of these matters should rest with the professional employees themselves and should be based upon their personal preferences under the conditions prevailing in a given situation.

Seek Legislation Which Would Give to Professional Employees the Right to Waive Voluntarily or to Exercise Their Collective Bargaining Rights

It is understood that this proposal would leave with the National Labor Relations Board the full right to determine appropriate *bargaining units,* but would leave with professional employees as individuals the right to decide whether or not they wished to be included in the bargaining units so established. Their choice would lie between accepting the bargaining unit as determined by the board and waiving the right to bargain collectively, in which case they would be assured the right to bargain individually. Under these conditions some professional employees might waive their right to bargain collectively because they did not like the bargaining unit to which they were assigned, or because they did not wish to bargain collectively regardless of the bargaining unit. It is assumed that these professional employees could not be required by employers to waive their bargaining rights in order to obtain and retain employment.

This proposal has the appeal that it would assure professional employees full freedom in their decision to bargain collectively or not to bargain collectively. The two principal difficulties which lie in the way of achieving this legislative change are:

(1) It would be difficult to give this freedom of choice to professional employees and to deny it to other classes of employees.

(2) Congress having declared it to be public policy to encourage collective bargaining may be very reluctant to permit any class of employees to "waive" their collective bargaining rights, even though they could not be forced to do so as a condition of employment.

Accordingly, even though this legislative change might be most acceptable to a majority of professional employees, it is likely to be more difficult to obtain than some such change as indicated in the immediately preceding proposal. It is obvious that a legislative change which would enable professional employees to waive their collective bargaining rights could not be expected to forestall attempts at unionization of professional employees on the part of affiliates of national unions associated with federations of rank and file employees. One would expect unions with jurisdictions restricted to professional employees to be chartered by the major federations of labor, and would expect also that such unions would make the attempt to win professional employees to their membership.

Seek Legislation Which Would Require the NLRB to Permit Professional Employees to Select Their Own Bargaining Unit and Agency

To overcome some of the objections to the preceding proposal, professional employees might follow a course of action similar to that endorsed by the American Federation of Labor and proposed in Senate Bill 1000, which was introduced on January 25, 1939 and referred to the Senate Committee on Education and Labor. This Bill, sponsored by Senator David I. Walsh of Massachusetts, would amend the National Labor Relations Act so as "to guarantee fair and equitable administration of the law by the National Labor Relations Board".[6]

Among the amendments proposed are those that would modify Section 9(b) of the Act, which relates to the determination of an appropriate bargaining unit. Under the existing law the Board alone has the power to decide whether the unit shall be "the employer unit, craft unit, plant unit or sub-division thereof". Senate Bill 1000 would modify this section to prevent the Board from establishing bargaining units which "embrace employees of more than one employer". Moreover, it would also add what has become known as "the craft unit amendment", a proposal endorsed by the American Federation of Labor. This amendment would "make it obligatory on the Board to respect the right of craft groups to decide for themselves by majority vote who their bargaining representatives shall be".[7] This is not a new principle of law. The proposal is similar to existing provisions in the Railway Labor Act.[8] The amendment "to protect the rights and integrity of craft unions" could be broadened to include professional as well as craft groups so that professional employees would be given the right to choose the bargaining unit and agency they believe to be best suited to their needs.

The adoption of this proposal would place the determination of both the bargaining unit and the bargaining agency in the hands of professional employees—an arrangement which professional employees may prefer. Since the principle of permitting homogeneous groups of employees to choose their own bargaining unit and bargaining agency has the wholehearted support of the American Federation of Labor, the possibility of obtaining Congressional support for an amendment to the National Labor Relations Act which would compel its observance by the Board is greatly enhanced.

Should this course of action be acceptable to Congress, it would place professional employees in a position under the law where they could decide for themselves the bargaining unit and the type of labor organization which they believe would best serve their interests.

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[1] The committee knows of no comprehensive survey which discloses the attitude of professional employees in the United States with respect to labor organization and collective bargaining for professional employees. A report issued by the National Organization Committee of Pittsfield (Mass.) Engineer's Association in April 1946 (based on a questionnaire filled in by 571 engineers, chemists, metallurgists, and related technical people residing in three separate localities) states:

"Although none of the three groups has been organized in a union, many of the technical people included in this survey have been faced with the imminent possibility of being included in a trade union, and have been subject to organizing programs by these unions. The questionnaire showed that at present less than 5% favor a certified union, rather than a professional organization, to handle their economic problems . . ." (*An Immediate Measure to Strengthen the Professional and Economic Position of the Engineering Profession.* A paper prepared by the National Societies Committee for the General Electric Engineers Association at Fort Wayne, Pittsfield, Lynn, and Schenectady, p. 11.)

The lack of interest on the part of these professional employees (fewer than 5%) stands out in rather sharp contrast with (1) an engineer's vote of from 30 to 36% for either an AF of L or CIO affiliate in some of the elections held by the National Labor Relations Board and (2) the results of a Canadian survey conducted by a Committee representing 14 engineering and scientific organizations. This Committee reported that 92% of those replying were in favor of collective bargaining under a new Order in Council which would permit engineers a separate bargaining unit and an agency of their own choosing. More significant, however, was the desire of 35% to be included in heterogeneous bargaining units under the then existing Order in Council if a separate bargaining unit and independent bargain agencies could not be obtained.

[2] *Maryland Drydock Company* (R-5212, R-5214, 49 NLRB 733, May 11, 1943). This decision reversed earlier decisions in which the Board had held that foremen were employees under the Act, and as such could affiliate with labor organizations including nonsupervisory employees, but that they could bargain collectively only in an appropriate bargaining unit which was separate from the productive force. The Board also had ruled that bargaining units which included various levels of supervisory employees were not appropriate. (See *Matter of Union Collieries Coal Company,* 44 NLRB 165, *Matter of Godchaux Sugars, Inc.,* 44 NLRB 874, *Matter of Boeing Aircraft Company,* 45 NLRB 630, and *Matter of Studebaker Corporation,* 46 NLRB 1315.)

[3] The membership of the Foreman's Association of America from September 1941 to December 1945 is presented below:

Date	Number of Members	Chapters
September 1941	350	—
1942 convention	10,392	8
1943 "	18,963	68
1944 "	25,000	109
1945 " (December)[a]	28,240	281

"[a] In June 1945 the membership of the FAA reached a peak of 32,357. The gains of about 21,000 members during the year were offset by losses of a little over 16,000, so that the net gain was slightly less than 5,000 members. Almost 60 chapters were dropped during the year. These losses were due chiefly to cutbacks after VE-day and VJ-day. With the progress of reconversion to peacetime production, the losses are already being offset by increases in membership". (Marquardt, Philomena: "Foreman's Association of America", *Monthly Labor Review,* February 1946, p. 243.)

[4] In the Matter of Packard Motor Car Company (7-R-1884, 61 NLRB, 4, March 26, 1945) the Board decided that the policies of the Act could be better effectuated by granting rather than by denying the right of certification to foremen. This position was reaffirmed in the Matter of Packard Motor Car Company (7-C-1452, 64 NLRB No. 204, December 7, 1945). The majority of the Board took the position that "the Board is dedicated to encourage bargaining, and should do so in the absence of any court decision, Congressional action, or statement of national policy to the contrary". It decided that foremen did constitute an appropriate bargaining unit on the assumption "that Congress intended the Board merely to group employees appropriately, not to exclude them from coverage of the Act". It declared, therefore, that foremen enrolled in an independent, unaffiliated labor organization constitute an appropriate bargaining unit.

In the Packard cases, the Board dealt with foremen employed in a mass production industry in which the supervisory duties and responsibilities were said to be restricted. In the Matter of the L. A. Young Spring & Wire Corporation (21-R-2815, 65 NLRB No. 59, January 8, 1946) the Board decided that foremen *in all industries* subject to the Act, regardless of *their duties and responsibilities* are entitled to the protection of the Act through the medium of independent, unaffiliated organizations, and in the B. F. Goodrich Company case (8-R-1874, 65 NLRB No. 58, January 8, 1946) it included various levels of foremen in a single bargaining unit.

In the Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division (6-R-1191, 66 NLRB No. 51, March 7, 1946) in which the petitioner was the United Clerical, Technical and Supervisory Employees Union of the United Mine Workers of America (District 50), the majority of the Board declared that it did not have the power to limit the choice of foremen with respect to a collective bargaining representative to an independent, unaffiliated foremen's labor union, inasmuch as the Act guarantees to all employees (including foremen) the right to bargain collectively "through representatives of their own choosing". Therefore, it refused to dismss a petition "for a supervisor's unit filed by an affiliate of the labor organization which represented the same company's rank and file employees".

In the Matter of California Packing Corporation (19-R-1558, 66 NLRB No. 180, April 3, 1946) the majority of the Board stated that it could not "refuse to entertain a petition filed by a supervisory auxiliary of the local union which represents the Company's nonsupervisory employees. . . ." Accordingly, it declared that all general foremen, department foremen, and assistant foremen in the establishment constitute an appropriate bargaining unit.

[5] *Monthly Labor Review,* March 1946, pp. 399-401.

[6] Statement of Senator Walsh (*Congressional Record,* First Session, 76th Congress, Volume 84, Part I, p. 741.)

[7] Statement of Senator Walsh, (*Congressional Record,* First Session, 76th Congress, Volume 84, Part 1, p. 742.)

[8] Section 2, fourth, provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

Chapter IV

COURSES OF ACTION WHICH PROFESSIONAL EMPLOYEES HAVE TAKEN UNDER THE N.L.R.A.

UP TO THE END OF 1946 all efforts to revise the National Labor Relations Act have been unsuccessful. It is now evident that additional attempts will be made during the 1947 legislative session, but the nature and scope of the revisions, if any, that will actually become law cannot be predicted. The Presidential veto of the Case Bill as well as the complete failure in the last decade of every effort to modify the N.L.R.A. demonstrate the powerful opposition which confronts those who set out to attain their goals in this way. Although the outcome of any attempt to protect the interests of professional employees through legislation cannot be predicted, modifications of the Wagner Act along the lines suggested by professional employees may be a time-consuming process. In the meantime, heterogeneous labor organizations composed largely of non-professional employees undoubtedly will continue their efforts to have professional employees included in their bargaining units.

Because they realize the difficulties that face those who seek revision of the Wagner Act and because they believe that the interests of professional and non-professional employees in many respects are dissimilar and that the inclusion of professional employees in heterogeneous unions may not give them the type of bargaining agency which they want, professional employees have taken various courses of action open to them under the Wagner Act to further their interests. This chapter will examine these courses of action.

No. 1: Take No Action at All

Sometimes when the issue of representation arises, professional employees do nothing about organization and collective bargaining and let events take their course. This approach to the problem has one important shortcoming. Failure to act may mean that professional employees may be included in a heterogeneous bargaining unit. In that event, they must accept the certified bargaining agency as their representative in establishing salaries, hours, and working conditions, even if they do not join the union. Moreover, if the employer grants the bargaining agency either a union shop or a closed shop, professional employees in the bargaining unit automatically must become members of the union or forfeit their jobs.

No. 2: Do Nothing Until the Representation Issue Arises and Then Seek Exclusion from the Bargaining Unit

Some professional employees have waited until the representation issue was raised and then requested the National Labor Relations Board to exclude them from the bargaining unit. Such a request to the Board is not likely to accomplish the desired results. As pointed out earlier, the National Labor Relations Act was passed to protect employees in their "right to self organization, to form, join or assist labor organizations" and "to bargain collectively through representatives of their own choosing". Moreover, public policy in part, as expressly stated in the Act, is to encourage the practice and procedure of collective bargaining. In the light of these objectives, the Board has taken the position that elections are held to find out the wishes of employees with respect to a particular union or several unions seeking certification and not to help employees stay out of labor organizations.[1]

There is, of course, a possibility that professional employees may be excluded from a heterogeneous bargaining unit in those situations in which the employer and the union seeking recognition agree of their own volition to exclude such employees. Under these circumstances, the Board, in the absence of a protest from professional employees, is inclined to accept this determination of the matter. "The fact that there is no dispute", says the Board, "usually is indicative of the propriety of the unit".[2]

On the other hand, if the union engaged in organizing the company's employees insists upon the inclusion of professional employees in the bargaining

unit, the issue in most cases will be placed before the Board. The Board would then apply the criteria established by it for determining the appropriate bargaining unit (see pp. 15-16). If professional employees customarily have been included in a heterogeneous labor organization in other plants in the industry, the Board undoubtedly would be reluctant to disturb the prevailing arrangement. Even where such a precedent has not been established and the professional employees refuse to sign membership cards but instead request that they be excluded from the proposed bargaining unit, the petition would not receive favorable consideration. The Board has consistently maintained that elections are held to determine the wishes of employees with respect to a union or unions seeking certification.

No. 3: Do Nothing Until the Representation Issue Arises and Then Join a Bargaining Agency Seeking Certification

Where a single bargaining agency which is acceptable to the professional employees is seeking representation this procedure raises no problem. Where two or more labor organizations are seeking representation, a dispute will arise. If one of them were acceptable, the professional employees presumably would sign up as members of that bargaining agency and work for its certification. Should the dispute come before the Board, consideration would be given to the employees' wishes. "Great weight", however, is attached "to the relative homogeneity of the unit sought and the bargaining history in the plant or industry. Unless counterbalanced by other elements, bargaining history is often a controlling factor".[3] In situations in which considerations favoring a craft unit (presumably a professional unit also) and those favoring a more comprehensive unit are of substantially equal weight, the Board frequently applies the Globe Doctrine (see p. 16 for definition) before making a final determination. Even under these circumstances, as is true of all representation cases, the wishes of employees are not the controlling factor since "the Board makes its findings of the appropriate unit upon the entire record, including the desires of the employees as reflected by the election results".[4] Thus this course of action also does not guarantee that professional employees will obtain a bargaining agency of their own choosing.

No. 4: Do Nothing Until the Representation Issue Arises and Then Join with Other Professional Employees to Form a Labor Organization

Professional employees may unite and form a labor organization of their own choosing. This is a right guaranteed by the National Labor Relations Act. Since collective bargaining, however, can only function in a specific bargaining unit, the new organization will have value only if the employer recognizes it as the bargaining agency for professional employees in his establishment. If he fails to do so or if two or more labor organizations seek certification, the representation issue is placed before the Board, whose duty it becomes to determine what the bargaining unit shall be. If the organization is free of employer initiation and domination, the findings of the Board may support its representation claims. On the other hand, the Board's decision may be unfavorable since it applies a number of criteria among which the wishes of the employees is but one, and not necessarily the determining, factor.

This course of action also has certain shortcomings. It takes time to clarify issues, to educate fellow employees as to their rights and obligations under the National Labor Relations Act, to consider the various courses of action that may be taken, to form a labor organization, to prepare a constitution, to elect representatives and to draw up a petition, with supporting evidence and data, requesting certification as a bargaining agency. Such petitions, if they are to have value, must be submitted early—certainly before the situation becomes crystallized. Moreover, professional employees may be at a decided disadvantage in carrying on these activities when competing with the skilled and experienced organizers who represent well-established unions.

These limitations should not be taken to mean that this course of action precludes successful organization on the part of professional employees who find themselves in this situation. As a matter of fact, professional employees have been successful in obtaining their own bargaining agency in competition with outside labor organizers. In those situations where professional employees have not had sufficient time to form an organization, it may still be possible for them to intervene and assist the Board in determining the appropriate bargaining unit.

To illustrate: in 1944 the professional engineers at the Victor Camden plant of the Radio Corporation of America, confronted with an organizational drive conducted by the Federation of Architects, Engineers, Chemists and Technicians, CIO, established a committee which was permitted to intervene and to assist the Regional Officer of the National Labor Relations Board in determining the appropriate bargaining unit.

At the Globe election conducted by the Board, almost two out of three engineers (64 per cent) voted for a separate bargaining unit. Subsequently they formed their own organization which was certified by the Board after a consent cross-check determination. It should be stressed, however, that this course of action to be effective requires quick action and informed leadership.

No. 5: Plan in Advance for a Labor Organization but Withhold its Establishment until the Representation Issue Arises

The shortcomings of Course of Action No. 4 may be overcome in part by anticipating the problems which would have to be faced if and when the question of representation actually arises. A group of professional employees, not engaged in supervisory work, may draw up a plan of action which could be put into effect when the need arises. Such a group would prepare in advance (1) a suggested constitution for a labor organization, (2) the publicity to be used, (3) the forms which would be needed, (4) the procedure to be followed in establishing a bargaining agency, and (5) the material to be used in petitioning the National Labor Relations Board for certification.

Preliminary planning along these lines may enable professional workers to retain the status quo and still be in a position to establish a bargaining agency of their own choosing with the minimum of delay. The Board probably would not regard this course of action to be in violation of the spirit and intent of the Act, provided, of course, the new bargaining agency had been developed in conformity with the provisions of the Act. It should be noted, however, that this issue has not come before the Board for a ruling. Should this plan be followed, the labor organization when established would still have to be designated as the bargaining agency, which again raises the question as to whether the desired classification of employees would constitute an appropriate bargaining unit in the particular circumstances under consideration. The criteria considered by the Board and the uncertainties involved have been discussed above.

No. 6: Form a Labor Organization Before the Representation Issue Arises

The professional employees in an establishment, or those in closely related professions have formed their own labor organization and requested the Board for certification before heterogeneous unions raised the representation issue.

The advisability of taking this course of action may be questioned by a substantial number of professional employees. Many of them may believe action along these lines to be an impairment of their professional status. A pronounced individualism and a strong urge towards independence have led some of them to oppose aggressively any efforts which would lead to organization for bargaining purposes. It must be acknowledged, however, that a certified bargaining agency of professional employees has this advantage—it will assure that the desires of the professional employees will be presented to their employers by representatives who are primarily concerned with the problems of professional people and have a real desire to further their best interests.[5]

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1 See Tabardrey Manufacturing Company Case, R-5402, 1943, 51 NLRB 246.

2 Ninth Annual Report of the National Labor Relations Board, 1944 Fiscal Year, p. 33.

3 Ibid., p. 34.

4 Ibid., p. 34.

5 The question has been raised by members of professional societies as to what would happen to the status of a bargaining agency which, having been certified, failed to engage in collective bargaining. Since the primary purpose of a true bargaining agency is to negotiate wages, hours, and conditions of employment, any organization which failed to seek a written contract within a reasonable period of time would place itself in an untenable position. Such action would undoubtedly be regarded by the National Labor Relations Board as a device to prevent the formation of a bona fide labor organization. However, since the Act deals only with unfair labor practices engaged in by employers, the Board, it would seem, would have no authority to take any action against labor organizations which after certification failed to bargain collectively, unless perhaps in those situations in which a competing union later seeks representation rights. It should be noted that one of the criteria of an independent labor organization is a written agreement with the employer.

Chapter V

TYPES OF COLLECTIVE BARGAINING ORGANIZATIONS OPEN TO PROFESSIONAL EMPLOYEES

PROFESSIONAL EMPLOYEES who have come to the conclusion that some form of organized representation is necessary are confronted with three questions. Should the organization to be formed or joined restrict its membership to the employees of a single employer or plant, or should its jurisdiction include the employees of a wider area such as a market, trade, or industry? Should membership in the organization be limited to employees in a given profession, or should it be broadened to include other groups of employees and, if so, what groups? Should organizations of professional employees remain aloof from or join up with one of the major national federations of labor? It is the purpose of this chapter to present the pros and cons involved in each of these questions.

Company Versus Trade or Industry Bargaining Agencies

Should membership in the organization be confined to the employees of a single employer or plant, or should some larger area such as the trade or industry be the basis of organization? Both types of bargaining agencies are legal under the Wagner Act. Both types have limitations and advantages.

The former enables employees to retain the leadership in their own hands, and to deal with problems confronting themselves and their employer in terms of what is best for their own interest instead of in terms of union strategy and objectives or the general situation in a trade or industry. It gives them a free hand in negotiating a contract and permits greater flexibility in solving current controversies since its freedom of action is not limited by a national constitution or by national officers. It also eliminates the necessity of paying dues to a parent organization.

On the other hand, a union restricted to the scope of a single employer or plant because of its limited jurisdiction, can do very little about industry-wide problems. It has much less bargaining power than an affiliate of a national union, especially when strikes become necessary to win demands. Except in fairly large companies, its limited treasury will not permit the payment of strike benefits or the employment of experienced negotiators who devote their full time to furthering the organization's objectives.

Organizations confined to the scope of a single company frequently serve as successful and satisfactory bargaining agencies in dealing with employers who are fair minded and have a real interest in maintaining mutually-satisfactory industrial relations. They are seldom effective in negotiating with employers who are slow to raise wages but quick to resort to wage reductions in order to effect economies, or in highly competitive industries in which labor standards tend to be undermined by ruthless price cutting. Finally, this type of labor organization does not have the benefit of advice from experienced national officers.

A national organization, because of its larger membership, has more prestige. Its substantial treasury enables it to engage full-time organizers, retain a research staff, and to employ competent officers and counsel. Its organizers are at the service of employees who desire to form a labor organization and to unite with it. Its research staff studies the industry and its problems and brings together essential information about trends in the industry and business generally which will be needed during negotiations. Its negotiators usually have had a long experience in dealing with employers and, not being on the employer's payroll, have greater freedom of action than do negotiators who are. They come to the negotiations equipped with economic and statistical data, a broad knowledge of the industry and the labor market, and a wide experience in collective bargaining which is usually equal to and sometimes superior to that possessed by the employer. Because the organization is national in scope, it is much better qualified to deal with problems which are common to the trade or industry and which can be dealt with effectively only on a national or industry-wide basis—an important consideration in a highly competitive or over-developed industry.

The officers of national unions, however, are of necessity concerned with union administration, organizing campaigns, union tactics, union politics, and with the broader aspects of the labor movement. Sometimes they become more concerned with national politics than with union objectives and programs. Their concern with the overall picture at times leads them to disregard situations in particular plants which require special treatment. Sometimes the desire for power and influence causes them to be autocratic in the methods they use, to neglect the day-to-day aspects of collective bargaining, to concentrate on increasing the union's membership and expanding its jurisdiction and to consolidate their hold on the national organization. Frequently they stress union security and the controversial aspects of collective bargaining and neglect those factors in the employee-employer relationship that make possible greater purchasing power and higher standards of living.

Scope of Membership of the Bargaining Agency

Both company and national organizations may limit their membership to a single craft or profession or may open it to other groups of employees. There are several possibilities from which professional employees may choose. At the company level these choices are:

1. An organization open to all employees in a given plant or company.
2. An organization of clerical and professional employees.
3. An organization of professional and sub-professional (technicians, draftsmen, research assistants, etc.) employees.
4. An organization of all professional employees.
5. An organization of employees in closely related professions, such as engineers, chemists, physicists, etc.
6. An organization of employees in a given profession, such as engineering.

It should be noted that each of these types of bargaining agencies may be brought together in a national organization. An examination of the structure of the American Labor Movement would disclose that local labor organizations are usually organized and chartered either by national unions or, to a lesser extent, by national federations such as the American Federation of Labor or the Congress of Industrial Organizations. There are, of course, many exceptions to this general tendency. It should also be pointed out that local organizations often include employees of more than one company and that cooperation through federations at the community, state, and federal levels is commonly practiced.

Of the six types of organizations listed above, the first—that is, an organization open to all employees in the plant or company—is the most inclusive, and the last, an organization of employees in a given profession, is the least inclusive. It may be helpful to explore the advantages and limitations of these two primary types inasmuch as the other forms of organization are intermediate types which attempt to overcome some of the shortcomings and still retain the advantages of one or the other of the primary types.

Employees in a bargaining agency confined to the members of a single craft or profession have a community of interest which it is impossible to attain in an organization in which unskilled workers, production workers, clerical and professional workers are enrolled. The skilled tool-maker has more in common with his supervisor than he has with the laborer who cleans up the shop, and the professional employee is closer in his interests to his superior than he is to his filing clerk. The more restricted the membership, the greater the community of interest. For example, engineers are drawn together (1) by an absorbing interest in the technical and scientific knowledge, and the principles and theories comprising the field of engineering, (2) by the basic desire to bring about a more effective utilization of materials, machines, human beings, and natural and mechanical forces, and (3) by a mutual concern with the maintenance of high professional standards among engineers.

The persistent demand on the part of many skilled craftsmen and professional employees for their own bargaining agency in part grows out of the fact that labor organizations are fundamentally political institutions. Union leaders are elected officials and as such must satisfy the demands of the large groups of employees whose votes elect them and maintain them in office. As a result, the interests of the craftsmen and professional employees, who politically—because of their number—are less important, tend to be overlooked and sometimes sacrificed for the benefit of the majority.[1]

It is the urge to be with those who are closely associated with them in their work and interests as well as the desire to be in a position to protect more effectively their economic and social status that have led many craftsmen and some professional employees to insist upon both a separate bargaining agency and to seek a separate bargaining unit.

On the other hand, organizations limited to the employees of a trade or profession, because of their more restricted membership seldom attain as large a membership and therefore the economic and political power that goes with large numbers, nor do they build up as large treasuries in as short a time as do the more-inclusive organizations. They are also more subject to jurisdictional disputes, that is, controversies which sometimes lead to work stoppages because two craft organizations each claim the right to perform a given operation or class of work or to represent a given group of workers. This type of organization, moveover, adds to the difficulties of the employer in that negotiations with many separate bargaining agencies are time consuming and complicate both the collective bargaining process and the task of maintaining mutually-satisfactory industrial relations.

An organization whose membership is open to all employees in a plant or company also has advantages. In the first place, it is likely to have more bargaining power than the less inclusive type of labor organization. An employer might find it quite possible to replace a limited number of striking toolmakers or engineers, but he would hardly attempt to replace his entire working force or even all of his clerical and professional personnel. He is more likely, therefore, to seek a common meeting ground and a settlement of the controversy when dealing with an all-inclusive organization than when he is negotiating with an organization which has a limited number of members in his establishment.

Secondly, an organization open to all employees should reduce the expenses that need to be incurred per employee to secure the advantages of collective bargaining because a single group of officers will suffice for the entire plant or company, and duplication of services, which prevails where two or more organizations exist, is eliminated. In the third place, the larger membership of the more-inclusive organization will give rise to a considerably larger treasury. Such a treasury would enable the employees in a medium-sized or large plant to employ a paid officer who could devote all of his time to furthering the employees' interest. Action along these lines would place the union representative in a position which should enable him to attain competence in negotiating, interpreting, and administering wage contracts.

The task of administering an all-inclusive organization is much more difficult. The lack of a community of interest among the members is more likely to give rise to internal conflicts and to hamper the adoption and attainment of common objectives and the development of union policies and programs. An important shortcoming of this type of labor organization from the point-of-view of professional employees is that it tends to give the non-professional and sub-professional employees a predominant voice in the control of the organization.

Relationship of Organizations of Professional Employees to a Federation of Labor Unions

Local bargaining agencies of professional employees may wish to form a national organization for professional employees in which case they must decide whether the organization should or should not affiliate itself with a national or international federation of labor unions such as the American Federation of Labor or the Congress of Industrial Organizations. Affiliation with a federation would give the new organization greater influence in labor circles and would enable professional employees to contribute a point-of-view which at times has been sorely needed at labor's conference tables. The action to be taken would largely be determined by the philosophy of industrial relations held by professional employees. They might prefer to work with other organizations and to help build a unified labor movement which would deal realistically with economic, social and political problems of the day, or to "go it alone" and work out their own problems by themselves as some of the railroad brotherhoods have done since their inception. Since affiliation with a national federation would not necessarily restrict the autonomy of the local organization, neither course of action would impair the effectiveness of professional employees in bargaining collectively with their employers or in protecting their best interests.

The above discussion of types of organization open to professional employees under existing laws is presented with no other motive in mind than the desire to assist professional employees to obtain a better understanding of the underlying issues involved. If it has accomplished its purpose, then the professional employees who have come to the conclusion that they should organize will be in a better position to decide what form of organization will best serve their purposes.

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1 Slichter, Sumner H.: *Modern Economic Society*, Henry Holt & Company, N. Y., 1931, pp. 183 to 186.

Chapter VI

FORMING AN ORGANIZATION FOR COLLECTIVE BARGAINING

Such factual data as are available make it unmistakably clear that those engineers and scientists who find it desirable or necessary to bargain collectively prefer to do so through organization of professional employees only.

The most extensive survey of the attitude of professional employees toward labor organizations and collective bargaining was conducted by a committee representing 40,000 Canadian members of 14 engineering and scientific organizations. The survey was made to determine the desires of professional employees with respect to unionization and collective bargaining under the Canadian Wartime Labour Relations Order-in-Council (PC-1003) which consisted of a set of regulations designed to protect employees in the exercise of their rights to form labor organizations and to bargain collectively. This survey disclosed that 92 per cent of the professional employees who expressed their opinions were opposed to being included in bargaining units made up largely of nonprofessional personnel. Instead they expressed a desire for a new Order-in-Council which would establish a separate national board for professional employees only. "Only 1 per cent indicated a preference for trade unions as their bargaining unit".[1]

Unfortunately, no extensive survey has been conducted to determine the desires of professional employees in the United States with respect to collective bargaining arrangements. Such evidence as is available, however, indicates that in those instances in which they desire, or find it necessary, to bargain collectively, a large majority want to be represented by bargaining agencies of professional employees. It is not surprising, therefore, that so many professional employees, when faced with the possibility of being included in heterogeneous bargaining units, have turned to their respective professional societies for advice and guidance.

This chapter has been prepared to meet the steadily mounting demand on the part of professional employees for information to guide them in organizing a bargaining agency of their own. It is not intended to influence the choice of professional employees but to supply them with information not readily available in the literature of collective bargaining.

Professional employees who are convinced that a labor organization is desirable or necessary may choose between two courses of action. They may invite a national or regional union or association or one of its affiliates to assist them in forming a local or they may form a labor organization of their own.

If the first alternative is chosen, the union or association undoubtedly would assist in forming a new local. In many cases, it would also instruct its officers in their duties and responsibilities, assist them in deciding on what would seem to be an appropriate bargaining unit, assist them in getting the local certified when such action is necessary, and either assist them in contract negotiations or negotiate a contract for them.[2]

If the professional employees of a given establishment, on the other hand, desire to form their own organization, the path to their objective is less easily traveled. In all probability few if any of the professional employees will have belonged to a union or have had experience in establishing one. The situation may be complicated further by simultaneous organizational activities on the part of one or more competing unions having substantial resources and represented by experienced personnel. Under these conditions how can professional employees keep themselves free of heterogeneous unions should that be their desire? If they want to form their own bargaining agencies what conditions must they meet and what steps should they take? It is with these questions that this chapter deals.

Requirements for Certification by the National Labor Relations Board

The immediate goal of the professional employees now becomes the establishment of a labor organization which, if challenged, could qualify for certification by the National Labor Relations Board. This does not mean that these organizations must be certified in all

instances. Employers may recognize organizations of employees without a determination of a majority by the Board. Such a determination is usually desirable, however, especially in those situations in which a competing organization is likely to claim jurisdiction, because disputes of this character almost invariably require a determination by an agency of the Board. Since such a determination is always a possibility, the new organization should make every effort to qualify for it.

A primary prerequisite for certification which every labor organization must meet is freedom from employer domination, interference, financial assistance or other support. Employer participation or assistance of any kind in the formation or administration of the organization should be avoided. In determining whether an organization is company dominated, the Board asks certain questions which may be regarded as tests or criteria that independent labor organizations must meet. In order that bargaining agencies of professional employees unknowingly may not engage in practices which later may be regarded as evidence of company domination, some of the more important of these questions are listed below:

1. Who inspired the organization and what were the circumstances which led to its formation?
2. Do the members of the organization pay dues?
3. Does the organization hold regular membership meetings?
4. Do executives or supervisory employees attend the meetings of the organization?
5. Does the organization have a constitution and by-laws? If so,
   a. Who drafted them?
   b. How many members attended the meeting at which they were adopted?
6. Do the by-laws contain a collective bargaining clause and make provision for a bargaining committee?
7. Is membership solicited during working hours, and is it encouraged by executives or supervisors?
8. Is membership a condition of employment?
9. Are dues collected by deduction from wages or, if collected by union representatives, is it done on company time?
10. Does the management:
    a. Contribute funds?
    b. Provide a meeting place?
    c. Supply legal advice?
    d. Provide paper, typewriter, etc.?
    e. Supply mimeographing, telephone, and clerical services?
11. Has the organization a written agreement with the company?
12. Are supervisors and executives eligible for membership in the bargaining agency and can they vote or hold office?

An affirmative answer to questions 2, 3, 6 and 11 and a negative answer to questions 4, 7, 8, 9, 10 and 12 would indicate that the bargaining agency was qualified to represent its members for purposes of collective bargaining, provided, of course, that the agency was inspired by the employees only and that its constitution and by-laws were drafted by them and adopted by a substantial representation of the members. The Board has only one concern, namely, to establish the fact that the employer has not inspired, encouraged, or intimidated the employees in the formation of the organization or has not and is not contributing to its support or influencing its administration.

Of interest also may be acts of employers which the Board in its decisions has identified as suggesting that the bargaining agency may be subject to management's will. Important among such acts are:[3]

1. Participating in the formation of a labor organization.
2. Suggesting to a picked group of employees that they create their own organization.
3. Assisting in drafting its constitution.
4. Interfering with the choice of employee representatives.
5. Circulating petitions in its support or allowing them to be circulated on company time.
6. Disparaging a rival organization to the employees.
7. Recognizing a labor organization without proof that it is the exclusive bargaining agency of the employees in a particular bargaining unit.
8. Electioneering for labor organizations on the part of supervisors and other company representatives.
9. Encouraging membership in the organization or voluntarily making membership a condition of employment.
10. "Eagerness" on the part of management to sign an agreement with the organization.
11. Showing favoritism in the treatment of its members.
12. Supporting a labor organization by granting its members the use of company facilities such as mailing lists, office space, mimeographing equipment, telephoning, etc.
13. Praising a labor organization in public.

The above acts on the part of employers have been take into consideration by the Board and have been regarded as evidence of employer domination and support. Each case, says the Board, must be "decided on the basis of all the facts and circumstances involved. It is impossible briefly to summarize all the considerations that have entered in the decisions of individual cases".[4]

While professional employees cannot prevent management from engaging in any of the above practices, they can refuse to be a party to them and may quite properly call management's attention to the Board's attitude with respect to any or all of them.

Particular attention is called to item 7 of the second list of criteria. In the light of the Board's attitude towards recognition without certification, professional employees should insist that the majority status of their labor organization be determined by agencies of the Board before engaging in collective bargaining. It should be recognized that the framers of the Act regarded the company-dominated union as a device of employers to forestall the formation of legitimate labor unions by their employees. Undoubtedly the Board, in dealing with the actions of employers which it regards as interference or domination, examines them in the light of their effect upon the freedom of action of employees while exercising their rights under the Act.

Great care should be exercised by the bargaining agency not only in conforming with the Board's criteria but in scrupulously maintaining its real independence. It may be very difficult for an organization to establish its actual independence once the fact of company domination has been established.[5] The position of the Board as summarized by itself follows:[6]

> "When an employee representation plan or company union has been dissolved, and succeeded by an ostensibly independent union, the Board must decide on the basis of the entire record whether the new union is a genuinely different and unassisted labor organization. Identity of officers and leaders of both organizations, similarity in structure, by-laws and constitutions, transfer of assets from the old to the new organization, and favoritism by the employer to the new organization as against a rival union, have all been found in various cases to indicate continued company domination".

Attention should also be called to the Board's ruling "that a union which, in its collective bargaining contracts and representative practices, discriminates against employees in the bargaining unit in regard to tenure of employment, rates of pay, or other substantive conditions of employment on the basis of race, color, or creed, will not be permitted to secure or retain the Board's certification as a statutory representative". It points out that a statutory representative is obligated "to represent all members of the unit equally and without discrimination on the basis of race, color, or creed".[7] The Board, however, "has held that a statutory bargaining agent may segregate racial groups within its membership into separate but equally privileged locals or branches of its organization".[8] In handling this issue the Board states that it "will scrutinize the contract and conduct of a representative organization and withhold or withdraw its certification if it finds that the organization has discriminated against employees in the bargaining unit through its membership restrictions or otherwise".[9]

Informal Canvass of Attitudes of Professional Employees

Having a knowledge of the requirements which a labor organization must meet in order to qualify for certification, the professional employees now may determine how their associates feel about organization and collective bargaining. The canvass may be conducted at luncheons, on street cars, busses, or automobiles going to and from work, or at the employees' homes.

It should make available the names and position of eligible professional employees and their attitude towards organization and collective bargaining. The professional employees may be classified as follows: (1) those opposed to any form of organization, (2) those favoring an independent organization of professional employees, (3) those sympathetic towards affiliation with a strong national union, (4) those with no definite opinion, (5) those unwilling to commit themselves, and (6) those who because of absence from work have not been interviewed.

Preparation of Statement on Collective Bargaining for Professional Employees

While the canvass is being conducted, two or three interested individuals may want to prepare a brief statement clearly setting forth the experience of professional employees under the National Labor Relations Act. The statement should point out (1) the events which have led to the contemplated action,

(2) the experience of professional employees with heterogeneous bargaining units embracing sub-professional and professional employees and sometimes clerical and even production employees, (3) the advantages and disadvantages of various types of bargaining agencies, (4) the rights of professional employees under the Wagner Act, and (5) the bargaining unit and other recommendations which seem advisable under existing conditions.[10] One of the recommendations should be the establishment of a Provisional Committee for the Organization of Professional Employees which should be authorized to conduct the organizing campaign and to suggest measures necessary for the protection of the interests of professional employees.

Establishment of Provisional Committee on the Organization of Professional Employees

The list of professional employees previously prepared should now be examined. From this list the names of supervisory and confidential employees should be removed.[11] This precaution seems advisable in those instances in which an independent labor organization is being formed notwithstanding the Board's statement that "a union is not disqualified to act as the bargaining agent of nonsupervisory employees merely because it may have a few supervisory employees as members".[12] It is obvious that the circumstances tend to make an independent union subject to more alert scrutiny than is apt to be the case with affiliates of national organizations. For this reason every effort should be made to keep the bargaining agency independent in fact.

Those employees on the list who have expressed an interest in the formation of an independent labor organization may now be invited to an *informal* meeting.

Use of company facilities for holding or announcing the meeting should be avoided. The purpose of the meeting should be to determine whether in the opinion of those attending an effort should be made to establish an independent organization of professional employees. The material in the Statement on Collective Bargaining for Professional Employees referred to above should be helpful in presenting the case for organization. After the pros and cons have been carefully considered, those present should be given an opportunity to endorse or reject, by secret ballot, the contemplated course of action. No attempt should be made to force a favorable decision. Should the majority support the program, the next item on the Agenda would be the formation of a Provisional Committee on the Organization of Professional Employees. To preclude later charges of undemocratic tactics, it is suggested that candidates be nominated from the floor. The chairman should first point out the advantages of adequate representation for various occupational groups and departments, and a satisfactory basis of representation should be agreed upon before the nominations are opened. Unless the number of candidates exceeds the number of members desired, those present may indicate their approval by acclamation or a show of hands.

The duties of the Provisional Committee are numerous. It must (1) work out the procedure to be followed in winning the support of those professional employees who are neutral or are opposed to an independent labor organization; (2) it must overcome the technical difficulties which arise in obtaining approval of the desired bargaining unit; (3) in the event that a competing labor organization asks the National Labor Relations Board for certification before the professional employees are organized, it must be prepared to present the case of the professional employees and to seek the right to intervene at any hearings involving professional employees; (4) it should supervise the preparation of bulletins and releases for eligible employees, the first draft of a constitution and by-laws, as well as application blanks, official ballots, and numerous other forms needed during the organizing process; and (5) prepare the N.L.R.B. petition for certification and its supporting statement. As the name suggests, the Provisional Committee is a temporary agency which will function until a going labor organization has been established.

The Provisional Committee will, of course, work through subcommittees, the number of which will depend upon the amount of time available for organization purposes. At least three subcommittees are suggested: one on membership, one to prepare the first draft of a constitution and by-laws, and a third to determine the composition of the proposed bargaining unit.

Conference with Regional Director of the N.L.R.B.

In those situations in which a competing labor organization has petitioned the National Labor Relations Board for majority representation before the Provisional Committee has completed its organization work, the Committee should confer with the Regional Director, presenting the views of the professional employees, and calling his attention to the organizational activities which they have undertaken. During the conference, the Provisional Committee might well discuss the rights of professional employees under the Wagner Act, ascertain the Director's concept of an appropriate grouping of employees in their situation, seek to obtain unofficial analysis of their tentative bargaining unit in the light of Board precedent and determine the steps it should take to protect the interests of its constituents.

It should be noted that the Board has permitted professional employees to be represented at hearings by a committee which is not a labor organization within the meaning of the Act and, therefore, could not seek a place on the ballot in the event that an election is ordered.[13] Such Intervenors have been admitted to help the Board determine the appropriate unit. The importance of intervention in such proceedings is clearly revealed by a study of decisions of the National Labor Relations Board. *The Board has taken the position that it cannot be expected to look out for the interests of a particular group of employees unless the question of those interests is raised during the hearings, preferably by those involved in the proceedings.*

The Subcommittee on Membership

Working under the general direction of the Provisional Committee, the membership subcommittee should prepare an Open Letter to Professional Employees which should set forth in a terse manner the type of information contained in the Statement on Collective Bargaining for Professional Employees which was previously prepared. This letter should present not only the contemplated course of action, but convincing reasons as to why such action is necessary and the measures proposed to effectuate the program. It should not be more than three or four pages in length, should be an objective statement, and as far as possible supported by facts and actual cases.

Following the release of the open letter, the committee, assisted by selected professional employees who wholeheartedly support the proposed program, should personally interview all eligible persons. A special effort should be made to win the support of professional engineers who by their competence and personal qualities have won the respect and confidence of their fellow employees. The participation of these individuals may favorably influence the decisions of those who are uncertain or extremely cautious.

The interviewers should exercise patience in dealing with eligible candidates who oppose the proposed course of action. Many of them will have deep-seated convictions growing out of education and training, their experience in the past and their temperament. The only hope of obtaining their support is to present clearly and calmly the issues involved, what failure to take action will mean, the limitations of other courses of action, and the persons in the organization who are supporting the program. The method of the interviewer, of course, will vary with the type of individual with whom he is dealing. It often pays to be a "good listener". It seldom helps to contradict or disagree. Frequently, best results can be obtained after the candidate has had an opportunity to state his objections in full, without interruptions or even as the result of tactful prodding.

Each person who has been interviewed and who expresses a willingness to support the proposed organization should be asked to sign an Authorization Card which states that he designates the Provisional Committee as his representative for the purpose of collective bargaining until the proposed labor organization has been established (see Form 1). It is important for the signer to write, not print, his name and to insert the date on which he affixed his signature. The name of the interviewer should also be entered opposite "witness".

It should be noted that the Board will "not proceed with an investigation and election unless the petitioning union makes a prima facie showing that it represents a substantial number of employees, sufficient to indicate that a majority vote is likely to be cast for a bargaining agent". As a rule the Board requires "that the petitioner produce specific evidence, such as authorization cards, indicating that it represents approximately 30 per cent of the employees in

AUTHORIZATION CARD

I, the undersigned, hereby designate the Provisional Committee on the Organization of Professional Employees of the ..... Company as my representative for collective bargaining until the labor organization which it is sponsoring is formally established.

Signature .....
Position Title .....
Date .....
Witness .....

Form 1

the bargaining unit".[14] The goal sought should be a substantial majority of all eligible candidates. To win an election the petitioning labor organization must obtain a majority of the votes cast.

Subcommittee on Constitution and By-Laws

An organization must have a constitution to function effectively. The constitution embodies the fundamental principles and policies which serve as a basis for establishing the organization and a guide to the officers and membership in making decisions and taking action. Many organizations adopt by-laws which contain rules and regulations that facilitate the administration of the organization's periodic activities and meetings.

Because the drafting of a constitution takes time and the formal establishment of a labor organization must await its adoption, the Provisional Committee should appoint the Subcommittee on Constitution and By-Laws as soon as possible.

The constitution of the Department of Water and Power Professional Engineers' Association is reproduced in Appendix C. This organization is an affiliate of the Southern California Professional Engineers Association. The constitution should not be regarded as a model. In fact, it would be unwise for independent labor organizations to follow the same pattern or use the same phraseology. It is intended only as a general guide which may suggest the subject matter to be dealt with and the form in which it is generally organized. Constitutions should be tailor made so that they will meet the needs and conditions prevailing in a given establishment or area. It is suggested that the subcommittee obtain a half-dozen constitutions of various types of labor organizations.

An analysis of the constitutions of six labor organizations for professional employees discloses the subject matter treated therein. The items commonly considered include:

1. *Name of organization.*
2. *Objectives or purposes sought.*
3. *Membership.*
   Usually the constitutions specify the qualifications for admission to membership. Less frequently they include provisions for resignations and the reasons for as well as the procedure to follow in suspension, cancellation of membership, and reinstatment.
4. *Meetings.*
   Time and notice of meetings, quorum, and procedure for calling special membership meetings.
5. *Executive Board.*
   As a rule, the constitutions designate the tenure of offices, time of meeting, and duties of members. Sometimes they also specify the quorum, procedure for resignations, basis for removal from office, vote necessary to decide issues, and the manner of dealing with expenses.
6. *Officers.*
   Name of offices, duties and functions of officers, and their tenure and eligibility.
7. *Election of Officers.*
   Method, notice and time of elections, eligibility of voters, procedure for nominations, and method of counting ballots.
8. *Referendum.*
   Questions which may be submitted or requirements for submission as well as method of submission and procedure to be followed in counting ballots.
9. *Finances.*
   Usually the constitutions deal with application fees, membership dues, emergency assessments, penalty for failure to pay dues, pay of officers, and method of handling receipts and expenditures. Less frequently reference is made to the bonding of officers, auditing of accounts, procedure to follow in regard to dues of unemployed members, the check-off, and fees to be paid to parent organization.
10. *Collective Bargaining.*
    As a rule the constitutions merely list the name and duties of the collective bargaining agency. Two constitutions designate the unit for collective bargaining. One constitution specifically requires executive board approval and another membership approval of the collective bargaining contract.
11. *Amendment of Constitution.*

One or two of these constitutions provide for an organizational seal; specify the procedure to follow when individual members submit grievances involving the organization, its officers or members; outline the procedure for enacting and amending by-laws; list the standing committees and their duties; designate the officers who are eligible to sign organization documents; specify the location of the main office where two or more chapters exist; and lay down policy with respect to strikes and affiliation with other labor organizations.

It is hardly necessary to suggest that the Subcommittee in drafting its constitution take into consideration the growing criticism levelled at labor organizations which have centralized great power in a single person or the executive board of the organization. Professional employees should insist upon constitutional safeguards which will ensure democratic administration of their labor organization.[15]

The Subcommittee on the Bargaining Unit

Unless the new organization of professional employees is recognized as the bargaining agent for the bargaining unit embracing the professional employees, it will have no practical value. In the event of a representation dispute, it will be designated as the bargaining agency by the Board only if the bargaining unit sought conforms with the requirements established by the National Labor Relations Board.

Generally speaking, the Subcommittee should not expect to bring all professional employees in the establishment into one bargaining unit. This goal is usually unattainable for several reasons. In the first place, professional employees engaged in confidential or supervisory positions should be excluded. In the second place, professional employees who are employed on jobs for which professional training is not essential are seldom eligible for inclusion in a unit of professional employees. Lastly, bargaining units are not composed of individuals based on individual qualifications, such as education, experience, and related factors, but classifications of employees engaged in similar or related work.

The Subcommittee therefore, must think in terms of jobs. A unit, says the Board, "delineated, upon the basis of the scholastic (or equivalent) history of individual employees rather than on the basis of their function, would in our opinion be unworkable and inappropriate for collective bargaining purposes".[16] For that reason the Board refused to recognize the bargaining unit recommended by labor organizations of professional employees in at least two instances. In the Matter of Curtiss-Wright Corporation the Board refused to include the name of the organization on the ballot,[17] and in the Matter of Southern California Gas Company it delineated a new unit on the basis of functions, placed the name of the Association on the ballot and, when it received the majority of the votes cast, certified it as the bargaining agent.[18] Thus, jobs and functions and not individuals constitute the point of attack in determining a tentative bargaining unit.

The position taken by the Board with respect to bargaining units for professional employees, as revealed by its decisions, may be helpful to those who have been assigned the task of determining a tentative unit. The Board has developed rules which it generally applies to the following situations: (1) where a labor organization seeks to bring office and subprofessional employees into a unit with production and maintenance workers, (2) where the labor organization desires to place professional, subprofessional and clerical employees in a single unit, and (3) where the unit sought would combine professional and sub-professional employees in one bargaining unit.

The Board has repeatedly expressed the opinion that "in the absence of persuasive reasons to the contrary" clerical, (not plant clerical who work with production workers and under the same supervision) and sub-professional and professional workers "are normally segregated from production and maintenance workers".[19] It has refused to include professional employees in such units in those cases in which they have intervened and protested their inclusion. Cases in which the Board has included professional employees in the same unit with production and maintenance are the exception: usually in those situations in which professional employees have requested such action or in which the two parties to the dispute have agreed upon a bargaining unit and no group of employees in the bargaining unit has raised formal objections.[20]

The record discloses that professional and subprofessional employees have been included in bargaining units with clerical employees primarily because they have not challenged their inclusion in the unit. The Board states that "in the absence of persuasive

reasons to the contrary . . . technical workers are usually segregated . . . from clerical employees if any interested party argues for their separation".[21] One can with safety assume the same position would be taken by the Board with respect to professional employees.

There should be no difficulty in those instances in which professional employees seek representation in a bargaining unit which excludes production, maintenance, and clerical workers provided they intervene before the situation becomes crystallized. It should be pointed out, however, that *once professional employees have been included in a heterogeneous bargaining unit, it is extremely difficult for them to withdraw from it for the purpose of establishing a separate bargaining unit of professional employees.*

The determination of a bargaining unit which excludes technical or sub-professional employees is a more difficult problem. The difficulty does not arise out of the unwillingness of the Board to designate a bargaining unit of professional employees only. It has done so in a number of instances. In two cases a committee representing professional employees—not a labor organization—was permitted to intervene. In both cases the committee demonstrated that the work of its constituents was different in function from that of technical employees. As a result, the Board ordered Globe elections so that it could determine the wishes of these professional employees.[22]

In another case, after the Board had established a unit of technical and professional employees but before the ordered election had been held, a petition filed by the employer and objections filed by a group of professional employees caused the Board to reconsider its decision and to order separate elections for technical employees on the one hand and professional chemists and engineers on the other.[23]

It is apparent, therefore, that the difficulty which confronts professional employees in seeking a separate bargaining unit is not the attitude of the Board, unless one challenges its definition of a bargaining unit. The obstacle which sometimes is very difficult to overcome is the similarity of duties and responsibilities in the work performed by these two groups of employees. Unless the work of professional employees is different in function from that of technical employees, the Board cannot logically place professional employees in a separate category for collective bargaining purposes. It cannot do so because it defines a bargaining unit—not as a group of individuals who possess certain types of experience and meet certain educational and professional qualifications but—as a classification of employees engaged in similar or related work.

The Subcommittee may start its determination of a proposed bargaining unit by preparing a list of jobs on which professional employees are working. These jobs may be classified in the following manner:

A. Jobs which unquestionably are professional in character.
B. Borderline jobs whose functions may or may not be regarded as professional.
C. Jobs which are clearly nonprofessional in character.

The Subcommittee undoubtedly will include Class A jobs in their proposed bargaining unit. After a careful study of Class B jobs, it presumably would select those jobs which in its opinion ought to be in the bargaining unit and for which a case can be made. Since job functions constitute the basis on which the bargaining unit is constructed, jobs in Class C cannot be expected to qualify for the proposed bargaining unit. This does not mean, however, that the bargaining unit as finally determined by the Board would necessarily be composed exclusively of employees in qualified jobs because the Board sometimes adds those workers, few in number, who directly or indirectly assist professional employees and who otherwise might have difficulty in obtaining representation. It should be noted also that all employees, other than those engaged on jobs of a supervisory or confidential nature, who are working on jobs assigned to the bargaining unit must be included in the proposed unit.

It is apparent from what has been said that the delineation of a bargaining unit is complicated by the fact that employees who have not met professional standards sometimes work side by side with graduates of approved educational institutions or employees who have otherwise acquired professional status.

The Subcommittee may have to justify the bargaining unit which it seeks to have established. For that reason it may be advisable to support its petition for certification with a statement of the reasons which explain its choice of jobs. In this connection the reasons given by the Board, in explanation of its decision to grant professional employees the opportunity, by means of a Globe election, to decide whether they want a separate or a heterogeneous bargaining unit, may be of value to the Subcommittee. The reasons which the Board believed appear to justify a separate bargaining unit for professional employees as disclosed by an analysis of six cases are:[24]

1. They perform theoretical rather than manipulative work.
2. They are responsible for their work.
3. They perform work requiring greater use of judgment and discretion.
4. They require less instruction and supervision.
5. They are engaged on work that requires higher educational qualifications, such as a college degree or equivalent experience.
6. They are hired through the company's central office rather than at the plant where they will work.
7. They have greater possibilities for advancement.
8. In general, they receive higher salaries.
9. They are paid on a monthly rather than weekly basis.
10. They have no fixed maximium or minimum wage rate.

The reasons given by the Board in these same six cases which support the claim for a single bargaining unit of both professional and technical employees are:

1. These employees work together, the work of one group complementing that of the other.
2. The work of both is technical in nature.
3. Both have had technical education and experience.
4. The nonprofessional employees often advance to professional status.
5. Both groups are paid on a salary basis.
6. They enjoy the same privileges with respect to vacations and various benefit plans.

Having determined a proposed bargaining unit, the Subcommittee should fill out a Petition for Certification of Representatives, a copy of which is reproduced. Copies of this form may be obtained from any Regional Office of the National Labor Relations Board.

NLRB-502
(4-30-46)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION FOR CERTIFICATION OF REPRESENTATIVES

Petitioner alleges that a question affecting commerce has arisen concerning the representation of employees of the employer named below, within the meaning of Section 9 (c) of the National Labor Relations Act, and requests the National Labor Relations Board to investigate such question and certify to the parties the name or names of the representatives that have been designated or selected.

1. Name of employer.....

2. Address(es) of establishment(s) involved:

3. Industry .....

4. Bargaining unit which petitioner alleges to be appropriate INCLUDES:

   EXCEPT FOR

5. Number of employees in the alleged appropriate unit .....
   (State here normal employment if establishment is not now operating)

6. Are there any individuals or other labor organizations who claim to represent any employees in the alleged appropriate unit; or are there any collective bargaining contracts covering any such employees?.....
   If so, state name and address of representative, affiliation, if any, and expiration date of any contracts:

7. Has the petitioner notified the employer of claim that a question concerning representation has arisen?.....
   If not, explain failure to do so.

8. Petitioner .....
   (State full name and affiliation, if any)

DO NOT WRITE IN THIS SPACE
Case No. ..... R .....
Docketed

By .....
(Signature and title of petitioner's representative)

.....
(Address) (Telephone No.)

Subscribed and sworn to before me this ..... day of ....., at .....,
as true to the best of deponent's knowledge, information, and belief.

.....
Board Agent or Notary Public

NOTE: Petitioner should submit with this petition, for examination by Board agents, (1) membership cards, designation cards, or other proof of its designation as bargaining agent by any employees within the alleged appropriate unit, and (2) an alphabetical list of such designations, including dates thereof.

(SUBMIT ORIGINAL AND THREE COPIES OF THIS PETITION)

U. S. Government Printing Office 16-45149-2

This petition should be accompanied with a supporting statement which summarizes the events leading up to the formation of the labor organization of professional employees, the objectives of the organization, the detailed description of the proposed bargaining unit, a statement of the reasons why it is sought, the authorization cards containing the original signatures, an alphabetical list of employees in the bargaining unit who authorized the petitioning agency to represent them, and the percentage that the membership constitutes of the total number of eligible professional employees.

It is understood, of course, that both the proposed bargaining unit and the supporting statement should be submitted for consideration and modification or approval first by the Provisional Committee, and later the full membership of the new organization. Lastly, the proposed bargaining unit should not be defined in the Constitution until the labor organization has been designated as the bargaining agency. It may be necessary to modify the proposed bargaining unit in subsequent discussions with the Board.

Organization Meetings

When the Subcommittee on Membership has obtained the support of a majority of the employees in the proposed bargaining unit, sooner if events make such action advisable, all eligible employees should be invited to a meeting to hear the report of the Provisional Committee on the Organization of Professional Employees. Since a copy of the Open Letter to Professional Employees has previously been mailed to all eligible voters, further explanations of the purpose of the meeting should not be necessary.

At the meeting the Committee might review briefly the problem confronting professional employees, the possible courses of action, the advantages and disadvantages of each, and the proposed bargaining unit. The findings and recommendations should then be presented. A frank discussion of all the issues should be encouraged. If deemed advisable, a representative of a labor organization of professional employees from a nearby establishment may be invited to relate the experiences of his organization with collective bargaining and to review the steps taken by his associates in establishing their association.

After a full discussion of the pertinent matters, the Chairman may suggest that action be taken on the recommendations of the Provisional Committee. Unless objections are raised, a ballot prepared in advance of the meeting should be distributed. The ballot may list the possible courses of action that might be taken so that voters may consider all possibilities and select the one they prefer, or it may simply afford them an opportunity to indicate whether they favor the formation of an independent labor organization of professional employees and, in the event they do, whether they would join such an organization and give it their support. The ballot should request the signature, the name of the department, and the position title of each voter. Because some voters may wish to give the matter further consideration, self-addressed envelopes should accompany the ballots.

The Provisional Committee with the assistance of two or three additional employees selected from those present at the meeting should tabulate the votes and announce the results either by mail or at the next meeting. If a majority approves the establishment of an independent labor organization, the date for the next meeting should be set and a copy of the proposed constitution mailed with the notice of the meeting.

At the second organization meeting, the proposed constitution should be the principal item on the agenda. Each provision of the constitution should be discussed and suggested modifications and additions carefully considered. Notes should be taken of the discussion so that the Subcommittee on the Constitution and By-Laws will have the information on which to revise the constitution in accordance with the wishes of those present. If a difference of opinion arises with respect to any article or section and more than one clause or solution is suggested, all proposals should be included in the revised constitution and listed as possible choices from which one is to be selected.

If a nominating committee is to be used in connection with the election of officers and representatives, it should be appointed or elected in accordance with the procedure specified in the proposed constitution before the meeting is adjourned. Action at this meeting will reduce the time needed to bring the organization into being.

The revised constitution, a self-addressed envelope, and a ballot should be mailed with the notice of the next meeting. All voters should be urged to return their ballots by mail as soon as possible. It should be noted that each article must be approved separately before the constitution can be adopted. A copy of a written ballot used by one group of professional engineers is reproduced as Appendix D. To ensure that only employees in the tentative bargaining unit vote, the name of each voter should be typed on the ballot sent to him.

Assuming that the constitution has been adopted, the first item on the agenda of the third organizational meeting should be the distribution and collection of applications for membership. The application blank should request certain identifying information (name, address, telephone number, date of birth, etc.), the name of the applicant's employer, the position held, his signature, and the date of signing. Since membership in organizations of professional employees is in part based on education and experience, the blank should provide space for reporting essential information concerning the educational and job history of the applicant. Finally, the application blank may carry a statement to the effect that the applicant, if admitted, agrees to subscribe to the provisions of the constitution. Appendix E reproduces the "Application for Membership" of the Southern California Professional Engineering Association.

When the membership has been determined by an examination of the application blanks filled in at the meeting, the report of the nominating committee becomes the next major item on the agenda. If elections are to be held at this meeting, an official election ballot should have been prepared in advance. If time permits, the election is frequently held by mail. Appendix F reproduces a copy of a ballot used by an association of engineers and engineering assistants in a Philadelphia company.

When the votes cast in the election have been tabulated, the newly elected officers take over all the responsibilities of the Provisional Committee. In most instances, many of the members of the Committee would serve as officers and representatives of the new organization. As a result, the conduct of the organization's affairs should not be materially affected. The official installation of the officers should take place at a later meeting.

Determination of Majority for Representation Purposes

The organization now has two immediate objectives to attain: designation of its organization as the representative of the employees in the proposed bargaining unit and a collective bargaining contract with the employer.

The first step to be taken is to write a letter to the employer calling his attention to the fact that the organization represents a majority of the employees in the positions and departments or divisions included in the proposed bargaining unit and requesting a meeting with an authorized representative of the Company for the purpose of negotiating a contract with respect to wages, hours, and working conditions.

At this meeting the employee representatives may be able to convince the employer that they represent a majority of the employees in the unit. In that event, assuming that no other labor organization seeks to represent them, the employer may recognize the organization without majority determination by the National Labor Relations Board. Frequently, after ascertaining the composition of the bargaining unit proposed by the organization, he will refuse recognition until the organization has been designated by the Board. From the standpoint of the labor organization, the latter course of action is more desirable. Informal recognition without a determination by the Board leaves the organization more vulnerable to a challenge on the part of a competing organization. For that reason, the representatives of the professional employees may want to maneuver the negotiations so that the employer will request a determination of majority representation by the Board.

A petition must be filed with the Director of the Regional Office of the National Labor Relations Board in the area in which the establishment is located. If the Provisional Committee has not done so previously, it may wish to engage legal counsel to handle its case with the Board. In cases in which no other labor organization is competing for certification, such action may not be necessary. An officer of an organization of professional employees whose experience covers more than one certification, recommends that legal counsel, because of his knowledge of the Board's rules of procedure, be employed when hearings before the Board become necessary.[25] In those situations in which two or more competing organizations seek certification, legal counsel or a consultant would seem to be highly desirable.

Before submitting the Petition for Certification of Representatives and its supporting statement, the officers may find it helpful to familiarize themselves

with the procedure followed by the Board in handling representation cases. In that event they may wish to reread the description on that aspect of the Board's work in Chapter I (pp. 15 to 28, inclusive) and the Board's Rules and Regulations, a copy of which may be obtained at one of its regional offices.

If another labor organization is interested in representing the professional employees, the new organization may find itself confronted with two difficulties: (1) challenge of the unit sought and (2) a possible challenge of the legal status of its organization on the ground that it is employer encouraged and dominated. The first difficulty can be met by carefully defining the unit in functional terms, and by a willingness to accept modifications of its proposed unit when the Board's requirements make such action advisable.

A charge of employer domination is much less likely than a challenge of the bargaining unit. The status of the Central Ohio Group of Professional Engineering Employees, however, was challenged by the AFL on the grounds that the American Society of Civil Engineers—including employers as members and officers—was instrumental in its establishment. The Board never decided this question because the unit sought by the Group was found inappropriate.[26]

The Association of Industrial Scientists, at Shell Development Company, was also challenged as an employer-dominated organization by the Federation of Architects, Engineers, Chemists and Technicians, C.I.O.[27]

A challenge of this nature is a serious matter because the Board will not consider a representation petition until the charge has been investigated, a time-consuming process. Fortunately, this practice is the exception and not the rule. It is interesting to note that after the research and development engineers at the RCA Victor Division of the Radio Corporation of America rejected a heterogeneous unit under FAECT representation the engineering members of FAECT decided that their best course of action was active participation in the independent union that was then proposed and later certified.

Once the organization has been designated the bargaining agent, it is ready to undertake the function which such agencies perform, namely, to negotiate a contract with the employer. Subsequent chapters will deal with the procedure followed in formulating demands, the purpose of collective bargaining, the content of the collective bargaining contract, and the process of negotiating and administering such contracts.

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[1] *Brief on Collective Bargaining* presented to the Wartime Labor Relations Board by the "Fourteen Societies" on January 9th, 1945. *The Engineering Journal*, January 1945, pp. 49-51.

[2] See Appendix B for list of national and regional unions and associations serving as bargaining agents for professional employees.

[3] Annual reports of the National Labor Relations Board, especially its report for the fiscal year ending in 1942, pp. 45 to 46.

[4] *Seventh Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1942*, U. S. Government Printing Office, Washington, D. C., p. 42.

[5] See *Matter of Dade Drydock Co.*, 58 NLRB 833, and *Matter of the Standard Oil Company of Ohio*, 63 NLRB 990. In these two cases the Board refused to entertain "petitions of organizations found to be successors to organizations previously ordered disestablished in proceedings involving violation of section 8 (2) of the Act". (*Tenth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1945*, U. S. Government Printing Office, Washington, D. C., 1946, p. 17 and footnote 8.)

[6] *Ibid.*, p. 17.

[7] *Ibid.*, p. 17. See also *Matter of Larus & Brother Co., Inc.*, 62 NLRB 1075.

[8] *Ibid.*, p. 18 See *Matter of Atlanta Oak Flooring Co.*, 62 NLRB 973.

[9] *Ibid.*, p. 18.

[10] See chapters 1, 3, and 5 of Part I for basic material to be used in preparing this statement.

[11] In the Matter of Ford Motor Company, 13-R-3219, the Board found it necessary to determine whether time study employees were either managerial or confidential employees. In its decision the Board stated:

"It is our intention to limit the term 'confidential' so as to embrace only those employees who assist and act in a confidential capacity to persons who exercise 'managerial' functions in the field of labor relations.

"We do not believe that the duties of time study employees, when viewed in the light of the foregoing definitions, warrant a finding that they are either 'managerial' or 'confidential'. The common denominator of all time study personnel is their performance of fact-finding duties through means of time and motion studies which are utilized by management in determining techniques of production and rates of pay. The performance of these functions alone is not sufficient to warrant their exclusion. *They cannot be regarded as formulating, determining and effectuating management policies, for they merely supply information which may be used by the employer in establishing policy regarding labor relations.* Nor can they be considered as 'confidential' in as much as they are primarily concerned with the gathering of technical data, and *do not assist and act in a confidential capacity to a managerial employee in the field of labor relations.* (To the extent that Matter of the Yale & Towne Mfg. Co., 60 NLRB 626, Matter of Consolidated Vultee Aircraft Corp., 54 NLRB 103, and similar cases are inconsistent with the views expressed above, they are hereby overruled.)"

[12] *Tenth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1945*, U. S. Government Printing Office, Washington, D. C., footnote 8, page 17.

[13] See *Radio Corporation of America, RCA Victor Division* (4-R-1429).

[14] *Tenth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1945*, U. S. Government Printing Office, Washington, D. C., page 16 and footnote 7.

[15] The Subcommittee may wish to refer to *Democracy in Trade Unions*, American Civil Liberties Union, 170 Fifth Avenue, New York 10, Nov. 1943. This publication surveys the practices of trade unions and recommends provisions which make for their democratic functioning.

[16] *Matter of Curtiss-Wright Corporation*, 9-R-1738, August 1945, 63 NLRB No. 30.

[17] *Ibid.*

[18] Case 21-R-3811, January 1946, 65 NLRB No. 90.

[19] *Tenth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1945*, p. 35. See also *Matter of Ward Leonard Electric Co.*, 59 NLRB 1305; *Matter of Socony-Vacuum Oil Co., Inc.*, 60 NLRB 559; *Matter of E. I. du Pont de Nemours and Co., Rayon Division*, 62 NLRB 146; *Matter of Savage Arms Corp.*, 62 NLRB 1156; *Matter of Rockford Screw Products Co.*, 62 NLRB 1430; and *Matter of Procter and Gamble Manufacturing Co.*, 62 NLRB 1262.

[20] See *Matter of Willys Overland Motors, Inc.*, R-829, Nov. 17, 1938, 9 NLRB 924, and Jan. 18, 1939, 10 NLRB 160; *Matter of Enterprise Wheel & Car Corporation*, R-4999, Mar. 26, 1943, 48 NLRB 644; and *Matter of Simmonds Aerocessories, Inc.*, R-3846-8, July 8, 1942, 42 NLRB 179.

[21] *Tenth Annual Report of the National Labor Relations Board, Fiscal Year Ended June 30, 1945, p. 35.* See also *Matter of Curtiss-Wright Corp.*, 63 NLRB 207 and cases cited therein (footnote 14), and *Matter of Continental Steel Corp.*, 61 NLRB 97.

[22] *Matter of Shell Development Co., Inc.*, R-3245, Jan. 13, 1942, 38 NLRB 192 and *Matter of Radio Corporation of America, RCA Division*, 4-R-1429, Aug. 30, 1944, 57 NLRB 1729.

[23] *Matter of Aluminum Company of America, et al.*, 6-R-1051, 1077-9, May 10, 1945, 61 NLRB 1066 and 62 NLRB 318.

[24] The previously cited cases of Shell Development Company, Radio Corporation of America, and Aluminum Company of America; and *Matter of Monsanto Chemical Co.* (1R-1626, Dec. 11, 1943, 53 NLRB 1283), *General Electric Company* (4-R-1348, July 6, 1944, 57 NLRB 81), and *Lockheed Aircraft Corporation* (21-R-2213, 2355, Oct. 20, 1944, 58 NLRB 1188).

[25] Green, Sterling S.: "Professional Engineers in Southern California Form Bargaining Units", *Civil Engineering*, May 1946, p. 213.

[26] *Matter of Curtiss-Wright Corporation* (9-R-1738, August 1945, 63 NLRB No. 30).

[27] Wagner, H. A.: "The Wagner Act and the Engineer", *Professional Engineer*, June 1945, p. 38.

Appendix A

NATIONAL LABOR RELATIONS ACT

(49 Stat. 449)

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of

whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

[1] So in original.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties confererred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order

of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in section 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts siting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdicition of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provision of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a), as amended from time to time, or of section 77 B, paragraph (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

Appendix B

NATIONAL AND REGIONAL ORGANIZATIONS SERVING AS COLLECTIVE BARGAINING AGENCIES FOR PROFESSIONAL EMPLOYEES

I. *Organizations Affiliated with the American Federation of Labor.*

1. American Federation of Government Employees
   900 F Street
   Washington, D. C.
2. International Federation of Technical Engineers, Architects and Draftsmen's Unions
   American Federation of Labor Building
   901 Massachusetts Avenue, N. W.
   Washington, D. C.
3. United Clerical, Technical and Supervisory Employees Union, District 50 of the United Mine Workers of America
   15th and I Streets, N. W.
   Washington, D. C.

II. *Organizations Affiliated with the Congress of Industrial Organizations.*

1. United Federal Workers of America
   532 17th Street, N. W.
   Washington, D. C.
2. United Office and Professional Workers of America (including the Federation of Architects, Engineers, Chemists and Technicians)
   1860 Broadway
   New York, New York

III. *Independent Organizations*

1. Association of Industrial Scientists
   Organized by professional employees of the Shell Development Company Laboratories at Emeryville, California, this group has not as yet obtained certification by the NLRB because its petition cannot be acted upon until investigation is made of charges of employer domination filed by a competing CIO affiliate. The constitution of the Association is so phrased as to indicate that affiliation of other units of professional workers is contemplated.[1]

2. Engineers and Architects Association of Southern California
   Founded originally as a social and technological society, the Association first entered the area of collective bargaining at the Lockheed Aircraft Corporation. Since, it has established chapters at Hughes Aircraft Company, Consolidated Vultee Aircraft Corporation, in the California State Highway Department, and is spreading into central and northern California.[2]

3. National Federation of Federal Employees, Independent.
   10 Independence Avenue, S. W.
   Washington, D. C.

4. National Federation of Salaried Unions
   102 Cable Avenue
   East Pittsburgh, Pennsylvania
   An affiliate of the Federation of Westinghouse Independent Salaried Unions, the Federation has locals in plants of several other companies and hopes to organize salaried employees into a national union. Professional engineers are usually placed in separate locals if they so request.[3]

5. National Professional Association of Engineers, Architects, and Scientists
   This Association was organized by seven collective bargaining groups in October 1946. Agreement has been reached on the objectives, form of organization, outline of the constitution, and committees have been chosen to draft a constitution and to conduct business until the first convention is held.

   The founding groups include:
   - Engineers Guild of Oregon (Portland)
   - Professional Engineer Employees Association of Eastern Washington (Spokane)
   - Sacramento Group of Professional Engineering Employees
   - San Francisco Group of Professional Employees
   - Seattle Professional Engineering Employees Association
   - Southern California Professional Engineering Association (Los Angeles)
   - Southwest Washington Association of Professional Engineering Employees (Olympia)

   Other organizations which have indicated unofficial interest in the Association are:
   - Association of Industrial Scientists (Emeryville, California)
   - Central Ohio Group of Professional Engineering Employees (Columbus)
   - Engineers and Architects Association of Colorado
   - Engineers and Architects Association, San Francisco Bay Area Chapter
   - Tennessee Association of Professional Engineering Employees (Knoxville)[4]

6. Organizations established under the plan of the American Society of Civil Engineers (some of these groups have been listed above as founders of the National Professional Association of Engineers, Architects, and Scientists):
   - Arizona Group of Professional Engineering Employees
   - Central Ohio Group of Professional Engineering Employees
   - Engineers Guild of Oregon
   - Engineers and Architects Association of Colorado
   - Professional Engineering Employees Association of Eastern Washington
   - Sacramento Group of Professional Engineering Employees
   - San Francisco Area Group of Professional Employees
   - Seattle Professional Engineering Employees Association
   - Southern California Professional Engineers Association
   - Southwest Washington Association of Professional Engineering Employees
   - Tennessee Association of Professional Engineering Employees
   - Utah Professional Engineers Employee Association

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[1] McIver, Wagner, McGirr: *Technologists' Stake in the Wagner Act*, American Association of Engineers, 1944.

[2] *Ibid.*, and *Unionization of Professional Engineers and Chemists*, Industrial Relations Memos No. 84, Industrial Relations Counselors, Inc., New York, July 25, 1946.

[3] *Ibid.*

[4] *Civil Engineering*, Nov. 1946, p. 480.

Appendix C

CONSTITUTION OF DEPARTMENT OF WATER & POWER PROFESSIONAL ENGINEERS' ASSOCIATION A UNIT OF THE SOUTHERN CALIFORNIA PROFESSIONAL ENGINEERING ASSOCIATION

ARTICLE I: *Name*

The name of this Association shall be, "The Department of Water and Power Professional Engineers' Association", hereinafter referred to as "the Association".

ARTICLE II: *Purposes*

The purposes of the Association shall be:

(a) To maintain, protect and advance the economic welfare of all professional engineering employees of the Department of Water and Power; to establish fair and reasonable relationships between them and their employers; and to negotiate collective bargaining agreements regarding wage, hour, and working conditions for all professional engineering employees or to delegate authority to do so to individuals or committees appointed for this purpose.

(b) To promote opportunities for advancement of the individual professional engineering employee and make it possible for individual effort and merit to be recognized and rewarded.

ARTICLE III: *Membership*

(a) Membership in the Association shall be confined to those employees of the Department of Water and Power who may be satisfactorily defined as "Professional Engineering Employees", as stated in Article II, of the Rules and Regulations of the Southern California Professional Engineering Association, as follows:

> "The designation, 'Professional Engineering Employee', used in the sense that persons capable of being so designated may join with others similarly capable of being so designated for the purposes of collective bargaining separately from any other group composed of persons not capable of being so designated, shall be that of only those who, excepting employers or those to whom employers have delegated managerial responsibility with respect to employment conditions, possessing an intimate knowledge of mathematics and the physical sciences, gained by technological and scientific education, training and experience, and in a position of trust and responsibility, apply their knowledge in controlling and converting forces and materials to use in structures, machines, and products, and whose work requires the exercise of discretion and judgment, is creative and original and of such character that the output cannot be standardized; and those who, without the experience set forth, but having been graduated from an approved educational institution and having received the degree of Bachelor of Science or its equivalent, in Engineering, are engaged in engineering work."

(b) The professional status of any person not previously defined to be a Professional Engineering Employee by the Committee on Employment Conditions of the Southern California Professional Engineering Association shall be determined temporarily by the three officers of this Association.

(c) Dues: Dues in the amount prescribed in Section (6) of Article IV of the Rules and Regulations of the Southern California Professional Engineering Association shall be paid to the Secretary-Treasurer of this Association.

ARTICLE IV: *Administration*

(a) The Association shall elect the following officers: a Chairman, a Vice Chairman, and a Secretary-Treasurer.

(b) The officers of the Association shall be elected for a period of one year, the term of office to begin July the first. Election of officers shall take place at the regular June meeting. Officers elected at a special meeting held prior to the regular meeting in June 1945 shall serve until July 1, 1946. The election of officers shall be by written ballot and shall be confined to those of the Association who are in good standing with the Southern California Professional Engineering Association.

(c) The Secretary-Treasurer shall keep a record of all proceedings. There shall be a report, open to public inspection, of all receipts and expenditures and their sources and purposes. Any expenditures which are to be reimbursed by the Committee on Employment Conditions of the Southern California Professional Engineering Association must have the authorization, previously obtained, of the Committee.

(d) No member of this Association may be an officer, committeeman, or act in any official capacity for this Association unless he is a member in good standing of the Southern California Professional Engineering Association. The affairs of the Association shall be conducted in accordance with the directions of the members of the Association.

ARTICLE V: *Collective Bargaining Agent*

The Committee on Employment Conditions of the Southern California Professional Engineering Association is designated as the "Exclusive Bargaining Agent" of this "Unit appropriate for the purpose of collective bargaining", and the Committee shall have the duty and power to direct all activities looking toward the acquisition of adequate compensation and satisfactory working conditions for all the Professional Engineering Employees of the Department of Water and Power, and the Committee shall represent them in such matters. The Committee on Employment Conditions is charged with the responsibility of conducting all negotiations with the Department of Water and Power, in accordance with the directions of the members of this Association.

ARTICLE VI: *Amendment*

This constitution may be amended by a vote at one of the meetings of the Association. The vote for an amendment shall be by written ballot and shall be confined to those members of the Association who are members in good standing of the Southern California Professional Engineering Association.

ARTICLE VII: *Meetings*

(a) There shall be held regular semi-annual meetings of the Association, one meeting during the second week of June and the other meeting during the second week of December.

(b) Special meetings may be called in cases of emergency, provided the meetings have the unanimous approval of the officers of this Association, and provided the requirements of notification stated in Article VIII are observed.

ARTICLE VIII: *Notification of Meetings*

Members of the Association shall be notified in writing of the time and place of all meetings. Notices of the regular meetings shall be sent to the members at least one week prior to the meetings and notices of special meetings shall reach the members at least one day prior to the special meetings.

ARTICLE IX: *Quorum*

A quorum is defined to be a majority of those members of the Association who are members in good standing of the Southern California Professional Engineering Association. No action taken at any meeting shall be considered official unless a quorum is present at the meeting.

SOUTHERN CALIFORNIA PROFESSIONAL ENGINEERING ASSOCIATION

RANGE OF SALARIES FOR DEPARTMENT ENGINEERS

	SALARY RANGE			DIFFERENCE	SALARY PER MONTH			INCREMENT
					2nd yr.	3rd yr.	4th yr.	
Engineering Aide	$200.	—	$250.	$ 50.	$210.	$220.	$230.	$ 10.
Engineering Assistant	$250.	—	$350.	$100.	$270.	$290.	$310.	$ 20.
Engineering Associate	$350.	—	$450.	$100.	$370.	$390.	$410.	$ 20.
Engineer	$450.	—	$550.	$100.	$470.	$490.	$510.	$ 20.
Senior Engineer	$550.	—	$725.	$175.	$585.	$620.	$655.	$ 35.
Principal Engineer	$750.	—	+	+	$800.	$850.	$900.	$ 50.

Other salary advances within the range to be determined by experience and individual job pricing.

Appendix D

OFFICIAL CONSTITUTION BALLOT

for ratification of

CONSTITUTION OF THE ASSOCIATION OF ENGINEERS AND ENGINEERING ASSISTANTS

dated March 27, 1946

INSTRUCTIONS:—Check your approval or rejection of *EACH* Article by placing an X in the appropriate square. Also indicate by placing an X in the appropriate square your choice of either write-up A or write-up B for:

Article IV Section 1c
Article IV Section 3
Article VII Section 1

After voting, fold the ballot and place in the envelope provided and deliver to any member of the Engineers' Council by April 8, 1946. The name of the voter has been placed on the ballot envelope solely for the purpose of checking the validity of the ballot and all such identification will be torn off and discarded prior to examination and counting of the ballots.

	APPROVE	REJECT
ARTICLE I	☐	☐
ARTICLE II	☐	☐
ARTICLE III	☐	☐
ARTICLE IV	☐	☐
Section 1c Written as per A	☐	
Section 1c Written as per B	☐	
Section 3 Written as per A	☐	
Section 3 Written as per B	☐	
ARTICLE V	☐	☐
ARTICLE VI	☐	☐
(Section 2 per A if A of Art. IV Section 3 is adopted)		
(Section 2 per B if B of Art. IV Section 3 is adopted)		
ARTICLE VII	☐	☐
Section 1 Written as per A	☐	
Section 1 Written as per B	☐	
ARTICLE VIII	☐	☐
ARTICLE IX	☐	☐
ARTICLE X	☐	☐
(Section 3a per A if A of Art. IV Section 3 is adopted)		
(Section 3a per B if B of Art. IV Section 3 is adopted)		
ARTICLE XI	☐	☐
ARTICLE XII	☐	☐
ARTICLE XIII	☐	☐

Form 3

Appendix E

APPLICATION FOR MEMBERSHIP

in the

SOUTHERN CALIFORNIA PROFESSIONAL ENGINEERING ASSOCIATION

I, ..., apply for membership in the Southern California Professional Engineering Association and if admitted, I agree to abide by its Rules and Regulations. I submit herewith my professional record as an engineer and state that I am not an employer, nor have I had delegated to me by my employer managerial responsibility with respect to employment conditions to the extent of hiring and firing professional engineering employees.
(Print Name)

My residence address is .....
I am an employee of .....
My work location is ....., Dept. or Group ....
Check mailing address above

My age is ..... years.
My immediate superior is .....

My present payroll title or company classification is .....
.....
I have been a professional engineering employee for .. years.
My duties consist of .....
.....
.....
.....
In the performance of these duties, I am given an opportunity for the use of originality and judgment to the following extent: .....
.....
.....
.....

I have worked for the following engineering organizations (not more than four positions need to be listed) during the past ten years and my degree of responsibility was as set forth:

ORGANIZATION AND DEPARTMENT	DATES FROM	DATES TO	PAYROLL TITLE OR CLASSIFICATION	DUTIES AND DEGREE OF RESPONSIBILITY

(over)

Are you a graduate of a recognized school of engineering? .....

If so, state institution, year of graduation, and degree received .....

.....

If not, state fully your technical education beyond high school, listing courses taken, dates and schools: .....

.....

.....

.....

.....

.....

Are you at present a member .....; an officer
(Yes or No)
..... of any other bargaining group?
(Yes or No)

If so, what group? .....

Are you a Registered Civil Engineer in the State of California? .....

Are you a member of a professional engineering society? .....

A.S.C.E., A.S.M.E., A.I.E.E., A.I.M.E., A.C.S., etc.

I have a community of interest with the professional engineering group and I consider myself a "Professional Engineering Employee" as defined by the Board of Direction of the American Society of Civil Engineers.

If admitted to membership I authorize the Committee on Employment Conditions of the Southern California Professional Engineering Association to represent me in all negotiations concerning employment conditions.

I enclose three dollars dues for the year ending December 30, 194..

Approved: ....
Secretary-Treasurer Signature of Applicant

....
Date of Committee Action Date of Application

.....
Card Issued (Date)

NOTES TO THE APPLICANT:

This application is prepared for the purpose of assisting the Committee on Employment Conditions in determining that you are a professional engineering employee. The requirements are stated in the definition of a "Professional Engineering Employee" mentioned above. Please give sufficiently detailed information that the Committee can take the correct action.

Employees of Firms where bargaining units have been or are to be established should check their exact payroll titles with their personnel departments and should state definitely in which section or group they are employed. Where convenient the application should be typed.

Application may be sent to your unit chairman or be sent to the Association headquarters, 943 South Plymouth Boulevard, Los Angeles 6, California.

Appendix F

OFFICIAL BALLOT[1]
THE ASSOCIATION OF ENGINEERS AND ENGINEERING ASSISTANTS

FOR REPRESENTATIVES:

The following members of the AEEA have indicated their willingness to serve as Representatives for Division 17 if so chosen:

.....R. B. Kent	.....B. T. Hannum
.....E. P. McCormack	.....L. W. Dorn
.....L. I. Meyers	.....Anna T. Gloster
.....T. W. Opdyke	.....N. W. Hipple
.....P. S. Sauer	

Indicate your preference for Representatives by placing the numeral 1 in front of the name of your first choice, the numeral 2 in front of the name of your second choice, etc., for a total of 6 candidates. In counting the ballots a first choice will count 6 votes, a second choice will count 5 votes, a third choice will count 4 votes, etc. The candidates receiving the highest and second highest number of votes will be Representatives. The candidates receiving the third and fourth highest number of votes will be the Alternates.

FOR PRESIDENT AND VICE-PRESIDENT:

....Ed. L. Neely ....John L. Staley ....

Indicate your preference for President by placing the numeral 1 in front of the name of your first choice and the numeral 2 in front of the name of your second choice. In counting the ballots a first choice will count 2 votes and a second choice will count 1 vote. The candidate receiving a majority of the votes will be President and the candidate receiving the next highest number of votes will be Vice-President.

After marking your ballot, seal it in the envelope provided and deliver it to R. P. McCants *ON OR BEFORE WEDNESDAY, APRIL* 17, 1946.

[1] This ballot was used in Division 17. A similar ballot was prepared for each division.