

Division of Professional Relations

Box 286, Rahway, N.J. 07065



No. 1
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A NEW DIMENSION TO PROFESSIONAL RELATIONS

Alan C. Nixon, President-Elect

The birth of any organism is generally attended by a certain amount of pain. Certainly the birth of the still-fetal Division of Professional Relations is no exception. The organization of any new division in the American Chemical Society is accompanied by a good deal of activity by a number of people and queries by some members as to whether it is really necessary. In the present case, the organization of a division not in just another area of chemistry but in an area which touches on the professional lives of all chemists has raised an unusual amount of soul searching and debate. Since a majority of the membership feel that professional relations should be the business of the whole Society, they ask: why is it necessary to have a special division for this? This was asked by many members (including myself) during the gestation period of the new division. Would not the existence of the division tend to reduce the thrust of the whole Society towards professionalism? As a matter of fact, answering this question constitutes one of the initial challenges to this new division.

However, I have become convinced that the division can play a new and important role in the definition of the Society's enhanced role. Since its members will constitute the most professionally activist segment of the Society, we can expect that this new division will produce new ideas, indicate new directions and constitute the avant-garde for this increasingly important activity of our Society.

By definition, divisions are not action bodies in our Society, except in organizing symposia and putting on meetings. So, what can the Division of Professional Relations do? In general, it can provide the new input which any area of science or sociology needs to improve basic understanding and to advance techniques and applications.

There are several specific things it can do. First, the division can be expected to help in the formation of professional relations committees in local sections. Second, it will be able to organize symposia in national, regional, and local section meetings in which the results of studies on ideas related to professional relations can be presented and discussed. Third, it can help in providing information for the Department of

Professional Relations and Manpower Studies in the national office. Fourthly, it can see to it that members who are terminated either en masse or individually are aware of their rights and privileges as members of the Society. It can encourage them to apply for the exercise by the ACS of the assistance that we have now available and will have in increasingly efficient form in the future.

PEP

Above all, the most immediate task of the new division is to assist in ensuring the success of Project PEP, the Professional Enhancement Program. While this project is getting off to a good start, thanks to a loan from the Board of Directors, the solicitation drive which is now going on must be a success or we are not going to be able to really enhance our program next year and bring it to anything like the sort of effectiveness that is required. As everyone knows, people generally, and chemists in particular, will not contribute money to support a program simply by asking them in a publication or in a letter. We all get too many appeals of that kind. For many people it is going to take person-to-person approach to allow the prospective

From The Chairman . . .

The time has come for ACS members concerned with professionalism to participate more actively in seeking solutions to the many professional problems that face the chemist and chemical engineer. The Division of Professional Relations offers a member-controlled avenue for such an effort.

The Division is in existence to forcefully and clearly bring member concerns on professional relations matters to the attention of ACS officers, councilors, and staff. Before we can do this, we must establish communication between professional relations committees of local sections, and organize seminars and open forums designed to hammer out meaningful consensus on points of controversy. Our divisional newsletter will provide a convenient means of communication to (and from) all Division members.

I expect that the Division (like other organizations) will be made up of two classes of members: active and supporting. An active member will serve on committees, initiate Division action, attend Division meetings, and contribute suggestions and criticisms to guide Division officers. A supporting member will be one who, perhaps because of extreme demands on time and energy, or because of a naturally retiring disposition, will do little more than pay dues, read divisional publications, and attend an occasional meeting.

Both classes of members are essential to insure success in reaching the goals of the Division. For, without the contributions of dues and opinions from the supporting members, there would be no hope that the efforts of the active members could be successful.

THE LEGAL RIGHTS OF PROFESSIONALS

An Interview with Jacob Kreshtool and Samuel V. Abramo, Attorneys

The following article was submitted by the Delaware Section Professional Relations Committee. The interview, which sought to clarify the legal rights and limitations for employed professionals (a group that includes most chemists and chemical engineers), was conducted by the Committee earlier this year.

We believe the information contained herein will be of interest to our members, although the views expressed by the attorneys are not necessarily those of the Division of Professional Relations. What do you think? Send comments to Dr. Dennis Chamot, Editor, Professional Relations Bulletin.

What is the legal status of a professional-technical employee under any existing state or federal law?

It seems to me that two laws apply. One, the Labor-Management Relations Act, formerly called the Taft-Hartley Act, gives people the right to organize. The word union is not used; it talks about labor organizations. It's purpose is to encourage collective bargaining, that is, employees speaking through one spoke man.

There is another law, the Fair Labor Standards Act, sometimes known as the Wage and Hours Law, that has to do with minimum wages and overtime pay. With regard to your question: professional-technical. That phrase doesn't pop up in either of these laws or the interpretations of them. The word professional does.

Professionals have considerable rights and considerable protection. They are defined. There is little question in my mind that a chemist is a professional. I don't know how you feel about it. The Labor-Management Relations Act defines professional employees as follows:

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related

work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)."

Two essential characteristics of professional work are advanced degrees and work of a professional nature. However, an advanced degree does not make a worker a professional unless the job he does is of a professional character.

Under this law, professionals have the right to organize, and moreover, they do not have to be in a mixed group (with other types of employees) unless they themselves choose to be in a mixed group. Many peripheral questions arise. Frequently, an employer wants all professionals in his employ to be in one group, and the employees themselves say, no, we want the professionals in the Chicago area, or in one plant building, or on one floor of that building to be an appropriate unit. We consider that to be appropriate, that is, there is mutuality of interest. Generally speaking, this is the test. So the fact that professionals don't have to be in a mixed unit doesn't mean that all professionals have to be in the same unit.

The federal government is the referee in these matters. The National Labor Relations Board decides whether a group is an "appropriate bargaining unit," for purposes of labor peace and preserving the intent of that law. There are all kinds of weird units. If somebody forces me to say, what is the test—well, I haven't got time for a whole course in this stuff—but the test is mutuality of interest. Do the people do similar work? Are they paid over the same pay periods, and in the same manner?

Does the organization have to be part of the Teamsters or CIO or any other union?

No. The law speaks about labor organizations. For example, if the seven or eight girls in my office wanted to form a labor organization, and 30% of them manifested in writing that they want to be the Kreshtool Law Firm Employees Association, and have it be their spokesman, that is it. They have an election. They don't have to be anybody.

Incidentally, if you ever try this, here or in another place, or wherever you work in the future, talk to your lawyer in advance. He will give you some suggestions like this, and it can turn out to be the best job insurance you ever had, because under the law, an employer may discharge you for any reason, but he may not discharge or discipline you for union activities. Before you make a move, make

sure your immediate supervisor, and his, and his, all compliment your performance. How am I doing? You are doing swell. Well, would you give me a letter for my records? My wife has been wondering how I am doing. Or, do it orally, with another guy present. That is just as good. You make a note of it. On such and such a date, he was told his work was going swell. On such and such a date, he got a raise. Then came the unionization attempt, and he was discharged.

Do courts have access to performance reviews?

Sure. You wouldn't be in court first. You would be in an administrative tribunal. All your stuff is subpoenaed.

I explained the legal status of professionals under one law. Under the other law, the Wage and Hours Law, the question of exempt and non-exempt comes up. Professionals are exempt from the provisions of this law. The definition of professional is very similar to the other law.

Professionals are exempt. That means you don't have to be paid 150% of your rate for hours you spend after 40. Your employer also doesn't have to pay you the minimum wage, but I assume you're all making at least \$1.60 an hour.

Is there some purpose for this law?

No. Laws get passed if you hang around legislatures. In whose interest do you think it would be to exempt professionals? Those who pay professionals. Nobody was there pushing for the professionals.

Employers consider chemists part of management. Now, I don't consider myself a part of management. One of the arguments is that a chemist has the opportunity to be promoted to a higher level, and a technician doesn't. Does this affect anything?

No. The word management is not an important word in these two laws. Supervisor is. It has a very precise meaning. Supervisors cannot be in the labor union and this law is not for supervisors. Analysis of the definition of "supervisor" in the Labor-Management Relations Act reveals that Congress has set up twelve specific criteria in the nature of types of authority. These test "authorities," to be exercised upon other employees and in the interest of the employer, are the authority (1) to hire, (2) to transfer, (3) to suspend, (4) to lay off, (5) to recall, (6) to promote, (7) to discharge, (8) to assign, (9) to reward, (10) to discipline, (11) responsibility to direct, and (12) to adjust grievances. By adding the words "or effectively

to recommend such action," Congress in effect doubled the twelve specific tests. To the authority to hire, for example, is added the further authority "effectively to recommend" hiring, and so on down the list of specific "authorities" listed.

Every year, we have to write a long recommendation on our technician who works for us 2½ days a week. It would appear they are trying to make us look like supervisors.

I would think so. I think these companies are very heads up outfits, and if I were their lawyer, I would be trying to do the same thing. The question is "effectively to recommend," and as I understand it, this means that if you recommend it, it happens. If that is the case, then you are a supervisor under this law. If it is not the case, it is just window dressing. Anyone can make a recommendation. I can recommend that everybody be given a great raise. The fact that a skilled worker has one or more helpers does not necessarily make him a supervisor in the eyes of the National Labor Relations Board, unless he actually has supervisory authority over them, that is, can hire them, fire them, or at least make effective recommendations on changes in their status.

The Labor Board are practical guys. They are not dummies. I will give you an example. The Wilmington News-Journal publishing company have for years been careful to call their delivery truck drivers independent contractors. They make them sign a document when they are hired, that they are independent contractors, not employees. And they take a blood oath, and all that. But the Labor Board just ruled that the drivers are covered by the

law, they are not independent contractors in fact. The News-Journal controls their route, and when they show up, and all that.

One of the important things you must have is the ability to make problems. That phrase, "make problems," is an old one from the John L. Lewis days. If you can't make problems for your employer, you are a supplicant. The guy who can give you some clues on legal problems is your lawyer.

What rights does the employee have against arbitrary dismissal? Most chemists have no written contract.

Then you are an employee at sufferance, and they can fire you for any reason, or for no reason, at any time — except for union activities. Essentially, the answer to the question, what protection does an employee have against arbitrary dismissal without a contract is none. He has none.

What about unemployment compensation after an employee has been dismissed for unsatisfactory performance?

I was the lawyer for the Delaware unemployment compensation outfit for nine years, and an employer would have a very hard row to hoe to prove that the discharge was justifiable. There is just too much that has gone wrong. You are given raises periodically, meaning that you were okay up to this point and then he says he is not satisfied. The employee simply says I did my best.

The companies go into unemployment compensation cases very well prepared. They come with 4, 5, 6 people, witnesses against you. They don't want their tax rate to be affected. Let me explain.

An employer pays a certain rate into the

State Unemployment Compensation, up to 4½% of a portion of each employee's salary up to a certain amount. Now, if you start laying people off and they get unemployment compensation, it would go from a very low rate, like 1%, up to 4½%. It makes a lot of difference to the employer. That is why employers who are smart fight like hell to keep the guy from collecting. They try to get you another job.

If you are asked to resign, and they tell you they will give you so many weeks to find a new job, should you take all the aid that is offered, but if you have not found a new job at the end of that time, and there is no real prospect of finding one, then refuse to resign so you will at least have the unemployment compensation?

Oh, yes. But never reveal your intentions, of course. Right now, you have to take it or leave it.

I represent mostly employers. And every time we try to use this law (Labor-Management Relations Act) I tell each of them, this is the right that has been given to these people. We are trying to frustrate it reasonably and honorably, with freedom of speech, and we can gild the lily, but we are trying to frustrate the intent of Congress which says that these people have a right to do it. Congress is going to protect that right. And if we win, I tell them it is a miracle so they will understand why they get such a big bill! Actually, I tell them I don't know of a single person who is worse off because he joined a union.

You know, I gave a talk at an American Chemical Society meeting. Some guy got up and talked about portable pensions like it was the latest invention. Hell, the carpenters have had that for 25 years.

Executive Committee DPR

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"What counts now is not just what we are *against*, but what we are *for*. *Who* leads us is less important than *what* leads us — what convictions, what courage, what faith — win or lose."

—ADLAI E. STEVENSON

APPLICATION FORM — DPR-ACS

I am a member of the American Chemical Society. Please enroll me as a member of the Division of Professional Relations. Enclosed is \$5* to cover dues through December 31, 1973. *Make checks payable to DPR-ACS.

Signature _____

Printed Name _____
Last First

Address _____

Mail to: DR. N. J. PINKOWSKI, Sec'y.
Division of Professional Relations
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P. O. Box 286
Rahway, New Jersey 07065

FROM THE EDITOR . . .

The Division of Professional Relations is the only one of the many ACS divisions which is primarily concerned with the chemist, rather than chemistry. This *Bulletin* is our major communications link; its job is to provide information, as well as to offer our members a forum in which to express their views.

The major article in this issue, "The Legal Rights of Professionals," is the result of efforts by the Delaware Section PR Committee. We think it deserves wider distribution, and so we are printing it here. Which brings me to a standing invitation I should like to extend to all local Sections. If at any time you perform some major activity or obtain new information in the area of professional relations in its broadest sense, and you feel this may be of interest to colleagues in other parts of the country, contact the Editor. We may be able to help you spread the word.

And now a request. The Division has experienced strong opposition in the past (undeserved though it may have been), and probably will again. We need support. Get some friends to join — today!

DENNIS CHAMOT

ACS NATIONAL MEETING, NEW YORK

Our program committee is busily planning a full and varied program for presentation at the New York national meeting, August 28-31. One session will be devoted to the "Guidelines for Employers." Panel members, representing the Council Committee on Professional Relations, industrial management, the Committee on Professionalism, women, and younger chemists, will speak from several different vantage points. This will be followed by a general discussion involving the panel and the audience. This should be a most interesting event. Plan to participate, Wednesday morning, August 30. (If you haven't seen a recent copy of the "Guidelines," copies may be obtained from David Roethel, ACS Headquarters, 1155 Sixteenth Street, N.W., Washington, D.C. 20036).

A "Forum on Innovative Programs in Professional Relations — Local Sections" will take place Thursday morning, August 31.

Other planned events include a session with the three presidential candidates, presentations by ACS staff members on current activities by the national organization on behalf of members, possibly a talk by a U.S. Senator or two, and more. Check C&EN for all the details.

PEP *(from p. 1)*

giver to understand what PEP is all about.

What is PEP all about? The things that we have to do are pretty clear in broad outline. We have to provide the best and most immediate assistance we can to unemployed members to help them get located in new jobs. But more importantly we have to try to stimulate conditions which will provide more jobs. The best resume in the world will not create a new job. We have to find out why people were fired during the past few years in such large numbers. We have to find out if industrial R&D is going out of style (or at least assuming a lower level of importance on a permanent basis). We have to study the probable demand for chemists in the future and see if in some way we can adjust the supply to the apparent demand. We have to provide rapid and effective assistance to members who run into employment problems. And most importantly, we have to provide legislators and Government information about the best way to ensure the attainment of a healthy chemical environment, industrially, academically, ecologically, and professionally.

So, good luck to this new venture in professional relations!

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