PROFESSIONAL RELATIONS BULLETIN

Division of Professional Relations
Box 286, Rahway, N.J. 07065

DENNIS CHAMOT, *Editor*

No. 25
September, 1980

FROM THE EDITOR . . .

Report from Las Vegas

The National ACS meeting in Las Vegas, as is true most of the time, was both interesting and frustrating. More so than even before, the committee meetings were interesting, and the Council meeting was pretty much a waste of time.

One of the more enlightening, if surprising, discussions during the Economic Status Committee meeting involved the question of deteriorating salary levels for chemists. Bob Jones of the ACS Department of Professional Relations and Manpower Studies presented several tables of data of per centage salary increases over time for chemists, several other types of professionals, and various non-professional workers. The result is that, while chemists have been hard hit by the high rates of inflation of the past decade, *so has everyone else*. According to the data, chemists have done worse than some, better than others, with no clear pattern emerging other than one of universal decline in purchasing power.

The tables are too long to present here, but I will give you part of one (the data, to be consistent, are all from the *National Survey of Professional, Administrative, Technical and Clerical Pay*, put out by the U.S. Bureau of Labor Statistics, and deal with employees of companies with, in general, more than 100 employees):

Occupation	*Average annual rate of increase, 1970-1979*
Accountants	7.1
Attorneys	6.7
Chemists	6.9
Engineers	6.7
Clerical	7.0
Consumer price index	7.3

Data were also presented for blue collar workers, other types of scientists, and academics. The general conclusion: we are all hurting, on average we are all hurting about as much, and the primary fault is the general state of the economy.

Does this mean everyone suffers equally? No, these numbers are all averages, and some will be better off than others. Does it mean that ACS should do nothing? No, but it does show clearly that we are deluding ourselves to think that the ACS can have much of an affect on chemists' salaries, without a general improvement in the Nation's economy. Perhaps the most that can be done by ACS in the salary area is to continue to gather the data, so that those in a position to help themselves know where it's at.

Your other Councilor, Barbara Abler, and I attended the meeting of the Professional Relations Committee. Nothing too exciting there, not because nothing is being done, but on the contrary, because the committee continues to do its job. It's amazing how many items on the committee's agenda are non-controversial, when only a few years ago they were the subjects of loud and bitter arguments.

The Council meeting, on the other hand, was a big disappointment. Once again, the Council showed itself to be inconsistent. On the one hand, there was an intense debate over the costs of improving the program to assist Councilors with their travel expenses, which should increase costs by no more than $25-50 thousand. Later during the same session, the proposed changes in ACS governance sailed through, without so much as a peep about what the additional administrative costs to the Society would be.

Let's look at these decisions a bit more closely. The vote to increase support for Councilor travel was defeated by about 75 votes, while about 150 Councilors did not attend the meeting. I think it is reasonable to assume that all of those Councilors present were able to meet the expenses of travel, because they were there. I think it is just as reasonable to assume that many of those who did not come had trouble with the cost. Those who are established have access to funds; those who are not, do not, quite often.

At the meeting, I requested that Executive Director Ray Mariella poll all those Councilors who did not attend the Las Vegas meeting to see how many could not come because of financial difficulties. I don't know if the poll will

show that this was a case of the haves against the have nots, but in any case it was strange to watch those in attendance vote against an issue that could be of great importance to those who were absent.

On the other hand, the votes on the fate of the experimental commissions went through very quickly, with relatively little debate for such major changes in the way the Society is governed. One result is the accumulation of power in the couple of new committees. Unless one went to appropriate committee meetings, a near impossibility with all the conflicts at ACS meetings, there was little opportunity for full scale debates on the merits of these proposals. Indeed, a report was handed to Councilors as they came into the Council meeting! A well orchestrated attempt, over a period of a couple of years, to downplay the changes as "experimental" for most of the time, and then ram through momentous changes all at once.

One last item on the Council meeting. Almost every meeting, you hear complaints by some Councilors that the meetings are too long (I am not in that crowd, as two mornings a year are little enough to ask of people who volunteer to become Councilors). Yet this time, President D'Ianni decided to use over a half hour handing out certificates for long service on the Council. Right in the middle of the meeting! I am sure, moreover, that many of the applauding Councilors did not realize that some of the longevity was a result of nothing more than having been elected President many years ago — all former Presidents are bylaw Councilors, for life. What a meaningless exercise.

Commercial

Once again it became painfully obvious at Las Vegas that this Division must grow. If we pick up a few hundred members, we not only have more influence, but we get another Councilor or two. Surely that would be a good thing for the only ACS Division concerned with the Chemist. Go out and join up some friends.

Second Commercial

If any of you have suitable articles for the *Bulletin*, I would be pleased to discuss them with you. And if any of you are itching to chair a symposium at a national meeting, contact Stan Drigot, GTE Auto Electric Laboratory, P.O. Box 2317, Tube A6, Northlake, Ill. 60164.

—Dennis Chamot

SOME ASPECTS OF PROFESSIONAL EMPLOYMENT AGREEMENTS

Howard M. Peters
Syntex Corporation, Patent and Licensing Department
3401 Hillview Avenue
Palo Alto, California 94304

Herman Levy
University of Santa Clara
Santa Clara, California 95051

INTRODUCTION

This paper will discuss employment agreements in the chemical industry. The topics covered include: 1) professional or unique skills agreements; 2) the effect of the National Labor Relations Act; 3) general agreements which include the results of the study performed at the University of Santa Clara about four years ago; 4) standard clauses in employment agreements; 5) anti-trust implications; and 6) possible clauses for negotiations.

PROFESSIONAL AGREEMENTS (UNIQUE SERVICES)

Let us first divide employer agreements into those which are for unique services and those which are general employment agreements. The former require the provision of specific unique sevices for the specific time. Many chemists who serve as specialized chemical consultants will fall in this category. These agreements are drafted by an attorney or a group of attorneys, and all aspects of the agreement are subject to negotiaton. Thus, the rules for interpreting these contracts are quite specialized.

Each state has a different set of statutes and case precedents to evaluate and enforce. Unique services agreements are found in the sciences, sports, and the entertainment industry. In California, the controlling case in this area was decided nine years ago in *Parker v. Twentieth Century-Fox Film Corporation*.

The case will have more meaning if you understand that Mrs. Parker is also known as Shirley MacLaine, star of such films as "Can Can", "The Apartment", "Irma La Douce" and "The Turning Point". Shirley MacLaine was under contract to work for 14 weeks for a total of $750,000 in 1975. The film was to be "Bloomer Girl" which would allow her to use her singing and dancing talents. For a variety of reasons, the studio cancelled the film and offered Shirley as a substitute a lead part in an adventure western called "Big Sky, Big Man" to be filmed in Australia. She refused to take the part and was never offered another substitute.

After 14 weeks of gainful unemployment, she showed up in her Rolls-Royce to collect the $750,00 in wages. The studio refused to pay and she brought suit. The case eventually went to the California Supreme Court who, in a carefully worded opinion, held for Ms. MacLaine. The court said that she did not have to accept employment offered that was not essentially equivalent. "Big Sky, Big Man" would not use MacLaine's talents as had been agreed upon. Nor was she required to travel to Australia to work. Most importantly, she didn't even need to seek any other employment during the period in question to mitigate the damages.

As a post script to this case, after Ms. MacLaine banked her $750,000 she went across town to a rival studio and made a memorable film called "Two Mules for Sister Sarah" with Clint Eastwood. Revenge is sweet.

The consulting agreement is essentially the same in chemistry for one who has unique skills. But the lesson has been learned well in California. Agreements involving unique skills are very carefully drafted to deal with as many contingencies as possible.

NATIONAL LABOR RELATIONS ACT

What additonal protection is available to the ordinary chemist? The National Labor Relations Act of 1935 and its amendments provides protection for the professional. However, only a few professional associations have been certified as bargaining units over the past 40 years

at companies such as RCA Corporation, Boeing, Shell Development. Since relatively few people are involved in this situation, it will not be discussed further here. (For additional information, see *Advances on Chemistry Series, No. 161*, "Legal Rights of Chemists and Engineers", p. 77ff. — Ed.).

GENERAL EMPLOYMENT AGREEMENTS

General employment agreements affect most employed industrial and academic chemists. On that first day of employment, a new employee is asked to make decisions and sign many documents. These include: medical plans, dental plans, retirement programs, stock options, profit sharing, vacation policy, sick leave policy, etc. Tucked away in this group of documents will be an employee-employer agreement. Most times the agreement will not define salary or working conditions or location.

Thus, if you are offered or requested to become the chief chemist at the company plant in Casa Grande, Arazona, you are faced with the problem of 1) going forth into the desert or 2) refusing to go and possibly destroying your future growth within the company. Each situation is different but the existing employment agreement will probably not help the employee.

A study at University of Santa Clara done about five years ago focused on the chemical industry to assess employment practices. One hundred and fifty companies having annual sales in chemicals of $50,000,000 or more were randomly selected. A cover letter explaining the survey, a questionnaire and a request of the corporate employment agreement was sent. We received about a 25% response. Thus, the statistical validity of the survey is more qualitative than quantitative. However, we believe the trends indicated are generally representative of the industry. About 60% of the professional employees at that time had no employment agreement. I'm certain this situation has changed markedly in the past few years. Most companies have a standard form concerned with patent disclosures and non-disclosure of trade secret rquirements. Most companies have a standard orientation and termination interview. Only a few reported they ever had the need arise for a company attorney to explain the agreement to the new employee.

Less than 15% of the respondants to the survey ever permitted a new employee to bargain for additional terms in the employment agreement. These terms include salary increases, personal patent right, outside consulting, outside teaching, etc. A few companies responded that bargaining was never permitted, others stated that the situation was considered on a case-by-case basis, and some stated the situation had never come up. More will be said of this subject later.

STANDARD CLAUSES IN EMPLOYMENT AGREEMENTS

If you were to start a new job tomorrow and were required to sign an agreement as a condition of employment, what type of clauses would you expect to find? The following is a shopping list:

1. Do all things necessary to further the company's business.
2. Assignment of rights to ideas and inventions to the company during term of employment. (A point of negotiation can be for retaining rights to patents unrelated to employment and developed on employee's personal time). The modern trend is to allow more freedom for the employee.
3. Description of prior patents and invention disclosure agreements with other companies.
4. Affirmative duty to disclose promptly any idea or invention in the company's line of business.
5. A commitment to assist presently and in the future to enable the company to protect these rights.
6. Affirmation that the employee will not disclose other company's trade secrets in the course of his employment.
7. A duty not to disclose the company's ideas and secrets while employed or afterward.
8. A duty not to disclose or use the company's ideas and secrets up to a specific date. The protection of trade secrets is too broad to discuss in detail here. I recommend that you see the ACS publications on Trade Secrets.
9. A covenant not to compete with the company in future employment. Each state has particular requirements for enforcement of such a clause. The courts will weigh these factors: 1) the company's right to protection of its secrets; 2) the employee's right to earning a living; and 3) the public interest in a free economy. The modern trend is to limit the corporation protection to a very narrow time, geographical area, and subject matter. The court will evaluate each case on its merits. Federal law will override because certain anit-trust implications of overly broad restrictive covenants are now being decieded. The courts will also weigh the relative economic postions of company and employee. With the anti "big business" attitude prevalent in this country, courts will examine the big corporation versus the defenseless employee. Invariably, in these cases the employee wins.
10. The last clause may be that the agreement may be terminated at any time by either party.
11. The employee is entitled to a copy of the agreement so that he is aware of his rights and liabilities.

NEGOTIAITON POINTS IN EMPLOYEE AGREEMENTS

Not surprisingly, the extent of negotiation over an employee agreement depends on the nature of the employment and size of the company. General observations are noted here.

Most industrial corporations will not permit an employee to have outside employment. This restriction is only good common sense. The company has secrets to protect and no man can serve two masters. One exception is teaching at a local college or university to maintain technical skills.

Government employment will also only permit teaching at the college and university levels. Here, however, the problem is one of a conflict-of-interest in decision making affecting the public trust.

Not for profit institutions will usually allow consulting and teaching *provided* that there is no present of future conflict with the institution's business.

Finally, a faculty member is usually encouraged to take on outside employment during the summers and as many industrial consultantships as he/she can handle.

In summary, employer-employee agreements are as varied as the the types of chemical companies and institutions in existence. Some standard language usually appears in all agreements. The modern trend is to strike down covenants not to compete that are overly broad or too restrictive on the individual employee. The modern trend is also to provide additional freedom to the individual employee at the expense of "big" business.