

**TDK Ferrites Corp. and Arkansas Regional Council
of Carpenters, Petitioner.** Case 17–RC–12209

September 14, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On July 11, 2003, the Regional Director for Region 17 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the petitioned-for unit of maintenance department employees, production technicians, tooling specialists, and set-up specialists employed by the Employer at its Shawnee, Oklahoma facility.

Thereafter in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, contending that the smallest appropriate unit must include all full-time and regular part-time production and maintenance employees at its Shawnee facility.

By Order dated August 6, 2003, the Board granted the Employer's request for review. The election was conducted as scheduled on August 5 and 6, 2003, and the ballots were impounded.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record in this proceeding, we conclude, contrary to the Regional Director, that the petitioned-for unit is not an appropriate unit for collective bargaining.

Facts

The Employer manufactures ferrite magnets used primarily in small electronic motors for the automobile industry. It employs approximately 222 employees at its Shawnee facility. The Petitioner seeks to represent the four groups of "maintenance" employees employed at the plant: maintenance department employees, production technicians, tool specialists, and set-up specialists.¹ There are approximately 55 employees in the petitioned-for unit.

¹ Each of these groups are further defined by their location in the plant. Specific job titles include: production technician, discrete press senior production technician, discrete press production technician, discrete press senior tool specialist, discrete press tool specialist, grinder production technician, loaf press set-up specialist, loaf press senior tool specialist, loaf press tool specialist, maintenance technician, powder engineering technician, powder production technician, powder senior total maintenance technician/electrical, powder senior total maintenance technician/welder, powder total maintenance technician, senior maintenance assistant, senior total maintenance technician, total maintenance technician, and sample shop specialist.

Employees in the maintenance department install, maintain, and repair machinery, equipment, physical structures, and pipe and electrical systems. Area Manager Roger Collins supervises these employees.² The maintenance department is not physically separated from the rest of the plant; rather, the maintenance department employees spend their entire shifts on the production floor, performing factory maintenance and preventive maintenance and installing machines. If a production machine needs repair, a production supervisor fills out a work order, the work order is given to Collins or to an available maintenance department employee, and a maintenance department employee is assigned to make the repair. If the repair requires the labor of more than one person, Collins sends an additional maintenance department employee to assist or, if no maintenance department employees are available, he assigns a production employee to assist.

Production employees assist maintenance department employees on a weekly basis. Production employees' maintenance work varies based on the scope of the repair job. For example, production employees have helped maintenance department employees remove parts from machines and replace them with new parts. They have also assisted them by handing them tools. There are approximately 20 employees who are classified as maintenance department employees. Maintenance department employees fall in the pay grade range of 8 to 12, although 18 of these employees are in pay grades 10 to 12.

Production technicians perform minor maintenance and repairs on machines throughout the plant. Production operators—production employees who operate plant machinery—notify production technicians when there is a problem with a machine, as the technicians are the first line of repair on the factory floor. If the production technician is unable to repair the machine, maintenance department employees perform the repair. Production supervisors supervise both the production operators and the production technicians. Production technicians serve as production operators when the production schedule demands it. They regularly relieve production operators while the operators are on breaks and fill in for them for entire shifts when they are absent from work.³ Similarly, senior production operators fill in for production techni-

² Collins directly supervises 13 employees. Powder Maintenance Supervisor Larry Maxwell and Plant Engineer Alan Hamilton, who report directly to Collins, supervise five and one employees, respectively. One employee, who works in the press/kiln area, is directly supervised by a production supervisor.

³ When a production technician relieves a production operator who is on break, the production technician not only produces the Employer's product but also uses the time to make sure that the machine is functioning properly.

cians when the technicians are absent from work. Grinding Area Production Manager Randy Deathrage testified that production technicians in his department perform both production and maintenance tasks. Thus, production technicians operate grinding machines every day, in addition to their maintenance and repair tasks. Deathrage estimated that production technicians in the grinding department spend approximately 35–40 percent of their workweek operating machines. Production technicians are required to take hydraulics and electrical tests to demonstrate their general knowledge of machinery. The Employer currently employs approximately 29 production technicians. Production technicians are in pay grades 7 and 8.

Set-up specialists are responsible for setting up and verifying the various tools in the presses. They are also supervised by production supervisors. When the set-up specialists are not setting up tools, they are assigned to perform machine troubleshooting, such as that performed by the production technicians. They also perform production work when needed. There are approximately six set-up specialists currently employed by the Employer. They are in pay grades 7 and 8.

Tooling specialists inspect tools with precision measuring instruments and assemble and install them into the presses. They also remove, disassemble, and make repairs to tools. Like production technicians and set-up specialists, tooling specialists are supervised by production supervisors. They work both in the production area and in the tool room, a two-room workshop located in the southeast corner of the plant. Tooling specialists perform production work when the production line is short-handed. The Employer currently employs approximately five tooling specialists. Tooling specialists are in pay grades 8, 9, and 10.

The bulk of the employees at the plant fill a variety of production positions.⁴ All shifts at the plant include employees performing production and maintenance duties, and all employees work side-by-side on the production floor. With the exception of new employees, almost all employees at the plant are qualified to operate a press or a grinder. Hence, at different times during a given shift,

⁴ In addition to the approximately 150 production employees employed solely by the Employer, the Employer and Express Personnel Services jointly employ approximately 15 or 16 production employees. These employees receive pay and benefits from Express under a contract between Express and the Employer. These employees work in entry-level production jobs and can remain in “temporary” status from 2 months to 2 years before they are offered permanent employment with the Employer, depending on the needs of the business. There are no such employees performing work performed by maintenance department employees, production technicians, tool specialists or set-up specialists.

employees who were assigned to perform maintenance work also perform production work, and vice versa. Maintenance employees perform production work on a daily basis. Additionally, production employees perform various maintenance tasks, sometimes with the assistance of maintenance employees. Senior production operators and production operators who have the requisite skills can do set-up work, adjust grinders and presses, change motors and pumps, and perform preventative maintenance on parts.

Employees in the petitioned-for unit are by and large hired from the ranks of production employees. Job postings are posted throughout the plant and any employee can apply. Currently, all but six of the employees in the petitioned-for unit were once production employees. Thus, transfers are permanent in nature, in the form of job promotions based on experience and skills. While the Employer makes some training available to all employees, no formal education or training is required as a prerequisite for obtaining any position. In fact, since most of the employees in the petitioned-for unit progressed from production to maintenance jobs, most of the skills that they need to successfully perform their duties were learned on the job. The Employer also pays tuition for employees who wish to take courses at the local Vo-Tech Center. All employees are eligible for this benefit, as long as the course is job related and their supervisor approves.

All employees are paid on the same pay scale; however, employees in the petitioned-for unit earn relatively more than employees excluded from the unit. The employees in the petitioned-for unit are classified in grades 6 through 12, with the bulk being in grades 7 and 8. Most of the production employees fall between grades 1 and 5, with a few senior production employees in grades 6, 7, 8, and 9.

All employees work under similar terms and conditions of employment. Insurance, a 401(k) plan, a pension plan, and vacation are all available to employees plant-wide.⁵ Company policies applicable to all employees are contained in a single employee handbook. A single human resources department administers the various terms and conditions of employment for all employees and all employees are subject to the same complaint and disciplinary procedures. All employees receive the same amount of breake time per shift and use the same break-

⁵ With respect to vacation, each department manager uses a “10% rule” as a guideline when determining the number of employees granted vacation time during a particular week. In this regard, a production supervisor takes into account the entire department in making this determination and does not separate employees in the petitioned-for classifications.

rooms. The Employer provides all employees with an optional uniform allowance through a payroll deduction. The uniforms, provided to the employees by a third party distributor, are worn by some but not all of the employees. The record reflects no prior collective-bargaining history at the facility.

Analysis

The Board has historically found petitioned-for separate maintenance department units appropriate when the facts of the case demonstrate the absence of a more comprehensive bargaining history and the maintenance employees involved have a community of interest separate and distinct from other employees. *American Cyanamid Co.*, 131 NLRB 909 (1961). In determining whether a sufficient community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Yuengling Brewing Co. of Tampa*, 333 NLRB 892 (2001); *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995). “While many factors may be common to most situations . . . the effect of any one factor, and therefore the weight to be given it in making the unit determination, will vary from industry to industry and from plant to plant.” *American Cyanamid Co.*, *supra* at 911.

In this case, the Petitioner contends that employees in the petitioned-for unit comprise four sub-types of the Employer’s maintenance employees and are an appropriate maintenance unit. To this end, the Petitioner asserts that maintenance employees have different training and aptitude requirements from production employees, are more highly skilled, and are typically on the higher end of the pay grade scale. With respect to the overlap between the petitioned-for maintenance employees and production employees, the Petitioner contends that the involvement of production employees in maintenance work is limited to casual assistance of the petitioned-for maintenance employees and minor adjustments to the machines.

The Employer, on the other hand, contends that its production and maintenance functions are so highly integrated that carving out the unit requested by the Petitioner would be inappropriate. The Employer argues that production and maintenance employees throughout the facility share a community of interest with the rest of the employees at the plant, as evidenced by, among other things, their common production and maintenance duties, common supervision, common working conditions, and their frequent interaction and interchange.

We agree with the Employer that the petitioned-for unit is not an appropriate unit for collective bargaining. Contrary to the Regional Director, we do not find that the record here supports a finding that the unit sought is composed of a distinct and homogeneous group of employees with interests separate and apart from other employees at the Employer’s plant.

The Employer’s operation is highly integrated, and there is a significant degree of interaction among the production and maintenance employees. There is no distinction between, or separation of, work areas occupied by the Employer’s maintenance and production employees. With the exception of the tooling specialists, who spend part of their day in the tool room, the maintenance employees work side-by-side with the production employees.⁶ There is thus a substantial degree of overlap of functions among the production and maintenance employees. The maintenance employees’ duties are an integral part of the production process, and employees work together to solve immediate production and maintenance problems. Production employees seek out the assistance of maintenance employees when confronted with a mechanical problem. Production operators routinely assist the maintenance employees in repairing, replacing, adjusting and keeping the presses, grinders, and powder house machinery up and running.

As a result of the employees working so closely together, there is a significant amount of temporary interchange between the production and maintenance employees. Production technicians, who comprise more than half of the petitioned-for unit, spend a significant portion of their workweek operating production equipment. They perform production work whenever the production schedule requires. They relieve production operators during breaks and fill in for production operators when they are absent.⁷ Indeed, Grinding Department Supervisor Randy Deathrage estimated that production technicians in the grinding department spent approximately 35–40 percent of their workweek performing production work. Similarly, production technicians are occasionally replaced by senior production operators when they are absent or on vacation. Additionally, there is a significant amount of permanent transfers between production and maintenance employees. The Employer hires its maintenance employees almost exclusively from the ranks of its production employees. All but six em-

⁶ See *F. & M. Schaefer Brewing Co.*, 198 NLRB 323, 325 (1972); *Peterson/Puritan, Inc.*, 240 NLRB 1051 (1979).

⁷ See *U.S. Plywood-Champion Papers, Inc.*, 174 NLRB 292, 295 (1969).

ployees in the petitioned-for unit once served as production employees.⁸

A further factor weighing against the appropriateness of the petitioned-for unit is that, aside from the maintenance department employees, all other employees in the petitioned-for job classifications are supervised by production supervisors. These same production supervisors evaluate the performance of both production and maintenance employees based on the same factors, applying identical rules and policies, and subjecting them to the same discipline and rewards.⁹

Finally, in all significant respects, all employees are subject to the identical terms and conditions of employment. The fringe benefits of all employees are identical. The production and maintenance employees work the same schedules and share the same facilities. The same individuals in the Employer's human resources department are responsible for making and enforcing work rules and policies for all employees.

In finding the petitioned-for unit appropriate, the Regional Director relied on *Ore-Ida Foods*, supra. This reliance, however, was misplaced, as *Ore-Ida Foods* is distinguishable from the instant case. In finding the petitioned-for maintenance unit appropriate in *Ore-Ida Foods*, the Board relied on numerous facts, including that the maintenance employees had their own separate department, separate supervision, and limited contact and interchange with the excluded production employees. Additionally, maintenance employees at the Ore-Ida plant were highly skilled and many classifications were traditional craft positions. As a result, there were few permanent transfers from production positions to maintenance positions because maintenance employees were required to participate in craft apprenticeship programs in order to gain the requisite skills needed to perform their jobs.

The facts of the instant case are clearly to the contrary. At the Employer's facility, the petitioned-for employees

are not organized in a separate department and most work side-by-side with and share immediate supervision with production employees. Moreover, the employees in the petitioned-for unit are not traditional craft employees and are not required to participate in a formal apprenticeship program. In fact, almost all of the employees in the petitioned-for unit have previously worked as production employees and many regularly perform production work even though they are classified as maintenance employees.

Despite the foregoing, we are not unmindful that there are some factors favoring finding the petitioned-for unit to be an appropriate unit. Maintenance department employees, production technicians, tooling specialists, and set-up specialists are paid on the higher end of the pay scale and, while the positions they fill do not require any traditional craft skills, they generally possess greater skills than the production employees. Nevertheless, we find that, under these circumstances, the production and maintenance employees share a broad community of interest that outweighs any nominal community of interest that may be enjoyed solely by the petitioned-for employees. Because of the highly integrated nature of the Employer's production process, the production and maintenance employees interact and interchange frequently, share common supervision, are functionally integrated, and have common working conditions and terms and conditions of employment.

Accordingly, we conclude that a unit limited to maintenance department employees, production technicians, tooling specialists, and set-up specialists is not appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. We reverse the Regional Director's finding and remand this case to the Regional Director for further appropriate action.

ORDER

The Regional Director's Decision and Direction of Election is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Order.

⁸ See *Greater Bakersfield Memorial Hospital*, 226 NLRB 971, 973 (1976).

⁹ See *Harrah's Illinois Corp.*, 319 NLRB 749, 750 (1995).