

Buckhorn, Inc. and International Union of Industrial and Independent Workers, Petitioner. Case 25–RC–10206

September 30, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND MEISBURG

On December 4, 2003, the Acting Regional Director for Region 25 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the petitioned-for unit of all maintenance employees employed by the Employer at its Bluffton, Indiana 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 of the Acting Regional Director's decision. The Employer contends that a separate maintenance unit is not an appropriate unit for bargaining and that the only appropriate unit must include production employees as well as maintenance employees.

On January 14, 2004, the Board granted the Employer's request for review.

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 find, contrary to the Acting Regional Director, that the petitioned-for maintenance unit is not an appropriate unit for collective-bargaining purposes.

Facts

The Employer manufactures plastic containers. All aspects of the production process are located within the same facility in Bluffton, Indiana. Manufacturing a container involves conveying plastic pellets from storage silos through an automated system that liquefies the pellets and then delivers the liquid plastic to one of nine presses. The liquefied plastic is poured through nozzles into an individual mold in the shape of a specific product that is installed in the press. After the product is molded, it is removed from the press and readied for shipment to the customer. The nine presses run automatically the majority of the time without the assistance of an employee. When the presses are run on a semiautomatic basis, an employee operates the controls to start the production cycle. The presses have a computerized robot affixed to them that assists in removing the molded product from the press and in placing the product on a conveyer belt, attached to the press, that takes the product to the shipping area. Molds are changed at the conclusion of a product run. Employees remove the existing mold and nozzles and install a new mold and new nozzles for the next product run. The removed mold and

nozzles are cleaned, repaired if necessary, and stored. Mold changes occur twice a day, on average, and can take from 8 to 12 hours to complete. The Employer operates around the clock, 7 days a week, with the majority of employees assigned to one of four rotating 12-hour shifts.¹ A number of employees work an 8-hour shift, Monday through Friday.

There are approximately 100 hourly paid employees who work at the Bluffton facility, 19 of whom are the maintenance employees the Petitioner seeks to represent. The remaining employees are production and shipping/receiving/warehouse employees. The plant manager has overall responsibility for the operation of the plant. A production manager, who reports directly to the plant manager, is responsible for production operations.² Reporting to the production manager are four production supervisors, each of whom is assigned to one of the four 12-hour shifts. The maintenance supervisor and the project engineer also report to the production manager.

The maintenance employees the Petitioner seeks to represent occupy one of five job classifications: skilled maintenance, set-up maintenance, tooling associate, tooling technician, and nozzle prep/build associate. The skilled maintenance employees are primarily responsible for the maintenance and upkeep/repair of the presses, as well as for programming the computerized robots. They spend approximately 90 percent of their time on the production floor working on the presses. Additionally, skilled maintenance employees are responsible for the upkeep of the production facility and the automated system that moves the plastic pellets from the storage silos to the presses. They may also help with mold changes. The skilled maintenance employees, currently five in number, report directly to the maintenance supervisor.³ There is one skilled maintenance employee assigned to each of the four rotating shifts; the fifth skilled maintenance employee works the Monday through Friday schedule.

The remaining maintenance employees, in the job categories of set-up maintenance, tooling associate, tooling technician, and nozzle prep associate, spend the majority of their time performing a variety of functions related to changing molds on the presses. They remove,

¹ Each shift works 2 days one week and 3 days the next.

² Also reporting to the plant manager are the materials manager, human resources administrator, quality assurance representative, and purchasing coordinator.

³ The maintenance supervisor, however, works only Monday through Friday from 7 a.m. to 4 p.m. In his absence, skilled maintenance employees are supervised by the production supervisor responsible for the shift to which they are assigned. If skilled maintenance employees encounter a problem, they are to contact the maintenance supervisor even if he is not at work.

clean, lubricate, and repair the molds and nozzles which have been removed from the presses, and they install the new mold and nozzles required to produce a new product. These duties involve hydraulic and electrical work. Unlike the skilled maintenance employees, however, these maintenance employees, currently 14 in number, do not report to the maintenance supervisor. Rather, they report directly to the production supervisor responsible for the shift on which they work. Set-up maintenance employees and tooling associates work one of the rotating shifts, while the tooling technicians and the nozzle prep associates work the Monday through Friday schedule.

Production employees include production associates, team leaders, auditors, utility associates, and shipping/warehouse employees. Production associates, in general, are primarily responsible for removing the finished product from the mold, inspecting and trimming the product, and assembling it with component parts if necessary. A production employee operates the controls to start the production cycle when the presses are running on a semiautomatic basis. A team leader on each shift ensures that the presses are running efficiently and producing a quality product. Production associates, referred to as auditors, function as quality control employees and inspect the product to ensure that it meets the Employer's standards. Auditors may be called upon to assist in trimming the molded product and moving the finished product to the warehouse area. Utility associates transport the finished product to the warehouse area of the plant where the product is loaded onto trucks for delivery to the customer. Certain production associates, designated as "helpers," work with the set-up maintenance employees during the mold changing process. The production supervisor on each shift supervises the production associates, team leaders, and utility associates, as well as the 14 maintenance employees. Auditors and shipping/repair/warehouse associates have separate supervision.⁴

Nine production employees designated as "helpers" work with the set-up maintenance employees and the tooling associates in the mold change process. These "helpers" regularly perform tasks performed by these maintenance employees, such as removing and installing nozzles, extension blocks, thermocouple wires and hydraulic hoses, as well as operating the crane to remove a mold from the press. Employees in all job classifications

⁴ Industry standards require that the auditors, who are primarily quality control employees, be supervised separately from employees who are actually involved in the production process. However, the production supervisor in charge of the shift on which the auditors work directs and monitors their work.

have frequent contact and interaction during the day, especially production employees and the skilled maintenance and set-up maintenance employees, who spend almost all their time on the production floor working on the presses doing repairs or production work. Thirteen of the current nineteen maintenance employees were originally hired as production associates, while four current production employees previously held maintenance positions.

The majority of production employees and maintenance employees work similar shifts. All production employees and maintenance employees are entitled to receive overtime pay, and receive identical holiday and vacation benefits, as well as identical insurance, health insurance, profit sharing and 401(k) benefits. All employees are subject to the same employment policies outlined in an employee handbook that each employee receives. Uniforms, although optional, are the same for all employees, who also share the same locker room and the same break/lunch schedule and room. Although the skilled maintenance employees receive the highest wages of any category of employee, the remaining maintenance employees and the production employees receive similar wages.⁵ Only skilled maintenance employees are required to have their own tools.

Analysis

It is the Board's longstanding policy, as set forth in *American Cyanamid Co.*, 131 NLRB 909 (1961), to find petitioned-for separate maintenance department units appropriate where the facts of the case demonstrate the absence of a more comprehensive bargaining history and the petitioned-for maintenance employees have a community of interest separate and distinct from other employees. 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. *TDK Ferrites Corp.*, 342 NLRB 1006 (2004); *Yuengling Brewing Co. of Tampa*, 333 NLRB 892 (2001); and *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), enf. 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.*, 131 NLRB at 911.

⁵ There is some overlap in wage rates. The maintenance employees' wages range from \$12.25 to 18.25 per hour, while the other employees' wages range from \$10.25 to 12.75 per hour.

In this case, the Petitioner contends that the maintenance employees constitute a distinct and homogeneous unit with interests different from those of the production employees. The Petitioner argues that maintenance employees are in a separate administrative department, are required to have, and do have, skills different from those of production employees, and receive higher wages. The Petitioner further asserts that there is little job interchange between maintenance and production employees, that maintenance employees are required to take their annual vacation during the summer plant shutdown, unlike other employees, and that they receive training from the Employer that other classifications of employees do not receive.

The Employer contends that a separate unit of maintenance employees is not appropriate, and that an all-inclusive unit of maintenance and production employees is appropriate. The Employer relies on the high degree of functional integration of its operations where, in the Employer's words, "employees work side by side and have daily interaction with each other." The Employer also states that there is a high degree of overlap in job functions. The Employer contends that production employees and maintenance employees throughout its facility share a community of interest based on their common supervision, comparable skills and job functions, frequent interchange, virtually identical terms and conditions of employment, and similar work schedules.

We agree with the Employer that the petitioned-for unit is not an appropriate unit for collective-bargaining purposes. Contrary to the Acting Regional Director, we do not find that the petitioned-for maintenance employees constitute a distinct, homogeneous group of employees that would warrant granting the Petitioner's request for a separate unit.

We reach this conclusion based on a number of factors. First, the Employer's operations are highly integrated and there is a significant degree of contact and interaction among the maintenance employees and the production employees. For example, the skilled maintenance and set-up maintenance employees spend virtually all their working time on the production floor, working with production employees on the presses to produce a finished product, and to change the molds on the presses when required. Production employees seek out the assistance of maintenance employees when a mechanical problem arises and routinely perform the same duties as maintenance employees, especially during the mold change process.

Second, there is not a wide disparity in skill level between the maintenance employees and the production employees, except for the five skilled maintenance em-

ployees. Although the skilled maintenance position is the highest skilled position in the plant, there are no educational or certification requirements for the job. Further, maintenance employees regularly perform production work. In fact, set-up maintenance employees, who comprise one-half of the maintenance employees, work with and perform the same work as production employees during the mold change process. Both groups of employees regularly assist employees in the shipping/receiving/warehouse area and employees from both groups routinely relieve each other during breaks and can fill in for one another on certain steps in the manufacturing process. Additionally, the production employees designated as "helpers" routinely do the same work as the set-up maintenance employees and tooling associates during the mold change process.⁶

Third, there is evidence of permanent transfers between the two groups of employees. Two-thirds of the current maintenance employees were hired from the ranks of production employees, and four production employees were previously maintenance employees.⁷

A fourth factor weighing against the appropriateness of a separate maintenance unit is that the 19 maintenance employees do not share common supervision: only the 5 skilled maintenance employees are supervised by the maintenance supervisor. Significantly, the maintenance supervisor is not available during all shifts when skilled maintenance employees work; he works Monday through Friday from 7 a.m. to 4 p.m. In his absence, the skilled maintenance employees receive their assignments from the shift production supervisor who has the authority to supercede directions left by the maintenance supervisor.⁸ The other classifications of maintenance employees are supervised by the shift production supervisor who also supervises production employees. The production supervisors function as the sole immediate supervisors of 14 of 19 maintenance employees, as well as approxi-

⁶ The Acting Regional Director found that the role of helpers was limited to performing "the least skilled functions associated with the task [of mold changes]." He concluded that their "assistance" did not require that the helpers be included in the maintenance unit because their work was unskilled and "peripheral" to the primary function of maintenance employees. The Acting Regional Director reached the same conclusion with respect to production employees' interaction with maintenance employees involved in "troubleshooting" machinery. The Acting Regional Director relied for his conclusion on *Capri Sun*, 330 NLRB 1124 (2000); and *Ore-Ida Foods*, 313 NLRB 1016 (1994), enf. 66 F.3d 328 (7th Cir. 1995). We, however, find these cases to be otherwise distinguishable because, inter alia, the maintenance employees were separately supervised from production employees and had limited contact and interchange with production employees.

⁷ See *TDK Ferrites Corp.*, 342 NLRB 1006, 1009-1010 (2004); *Greater Bakersfield Memorial Hospital*, 226 NLRB 971, 973 (1976).

⁸ See *TDK Ferrites*, supra at 1010; *Harrah's Illinois Corp.*, 319 NLRB 749, 750 (1995).

mately 70 production employees.⁹ While nominally within the maintenance department, 14 maintenance employees are supervised by production supervisors who have authority to hire and discipline them and direct their work.

Finally, in all significant respects, all maintenance employees and production employees share identical terms and conditions of employment, including work rules and policies, work schedules and vacations, lunch facilities, and fringe benefits.¹⁰ Although certain maintenance employees are paid at a higher level than production employees, largely because of their skill level, there is some overlap in wages, just as there is overlap among employees in the exercise of their job skills. While these two factors might appear to favor separate units, we find that the modest discrepancy in wage rates and skill levels is relatively insignificant and is outweighed by all the other factors that clearly demonstrate the broad community of

⁹ The maintenance supervisor is involved in the hiring of skilled maintenance employees, while production supervisors are involved in the hiring of employees within the other maintenance employee classifications.

¹⁰ The only requirement unique to some maintenance employees is that skilled maintenance employees must have their own tools.

interest that the maintenance employees share with production employees.¹¹

Accordingly, we conclude that the petitioned-for unit limited solely to maintenance employees is not an appropriate unit for the purposes of collective-bargaining. We reach this conclusion based on the highly integrated nature of the Employer's production process during which maintenance and production employees interact and interchange frequently; the shared supervision among employees, including the split supervision within the group of maintenance employees; and working conditions and terms and conditions of employment common to all employees. We reverse the Acting Regional Director's finding and remand the case to the Regional Director for further appropriate action.

ORDER

The Acting 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 Decision on Review and Order.

¹¹ See *TDK Ferrites*, supra.