

Witteman Steel Mills, Inc.¹ and United Steelworkers of America, AFL-CIO/CLC,² Petitioner.
Case 31-RC-4694

November 17, 1980

**DECISION ON REVIEW AND
DIRECTION OF ELECTION**

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. On March 25, 1980, the Acting Regional Director for Region 31 issued his Decision and Order in the above-entitled proceeding,³ in which he dismissed the petition as premature, finding that the Employer did not employ a substantial and representative work force at the time of the hearing. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review, contending that the Acting Regional Director's factual findings were clearly erroneous and that these errors prejudicially affected his ruling.

On May 21, 1980, the National Labor Relations Board, by telegraphic order, granted the request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the briefs of the Petitioner and the Employer, and makes the following findings:

1. The Employer is engaged in the manufacture and sale of steel products at its facility in Fontana, California. After having ceased production and undergone bankruptcy proceedings in 1977, the Employer, in September 1979, resumed operations under new ownership. At the time of the hearing, the Employer had only one department, the rolling mill, in full operation, but planned to have the melt shop and continuous casting facility operating at full capacity in another 4 or 5 months.

The Acting Regional Director concluded that the present complement was not a representative and substantial one because at the time of the hearing, February 26, 1980, the Employer employed 58

employees in 15 job classifications and planned to expand its work force to a total of 159 employees in over 35 classifications in another 4 to 5 months, and to 250 employees in 40 classifications by 1982.⁴ The Petitioner contends that the Acting Regional Director erred in his calculation of both the present and projected number of employees and the present and projected number of job classifications. The Petitioner also contends that the Acting Regional Director should have confined his comparisons to the projected expansions which the Employer contemplated would occur within the 4 or 5 months from the date of hearing. We find merit in the Petitioner's contentions.

First, in our opinion, the only reasonable projected expansion of the Employer's operations against which to measure the substantiality of the present work force is that anticipated to take place by July 1980, 4 or 5 months from the date of the hearing. The expansion anticipated to occur beyond July 1980 depends on the Employer's purchase of two new pieces of equipment, a shredder and a shearer, and the erection of a new building. Since, at the time of the hearing, the Employer had not yet purchased the new equipment, and had not yet begun construction of the new building, we find the expansion contemplated to occur by 1982 too indefinite and speculative to use as a standard by which to measure the present complement of employees.

Accordingly, we will look only to the expansion projected to take place by July 1980 in determining the substantiality of the Employer's work force.

As noted above, the Petitioner disputes the Acting Regional Director's calculations as to the present and projected complement of employees. Based on the Employer's organizational chart dated February 23, 1980, we agree with the Petitioner and find, contrary to the Acting Regional Director, that at the time of the hearing the Employer employed 54 employees in 15 job classifications, and planned to employ by July 1980, 149 employees in approximately 36 job classifications.⁵ Furthermore, we note that the Employer's expansion plans disclose that it will employ 22 of the anticipated additional employees in 30 days from the date of the hearing—i.e., by the end of March 1980—and, based on calculations most favorable to

¹ The petition and other formal papers were amended at the hearing so that the name of the Employer would correctly appear in the captions.

² The name of the Petitioner appears as amended at the hearing.

³ Hod Carriers, Construction, Production and Maintenance Laborers, Local 783, AFL-CIO, was permitted to intervene on the basis of a showing of interest. Its name appears as amended at the hearing.

⁴ The record is somewhat unclear about when the second anticipated expansion which involves the purchase of two new pieces of equipment, a shredder and a shearer, and the construction of a new building for the rod mill operation will actually take place. However, it appears that the shredder, once on the Employer's property, will be operating in 4 to 6 months, and the rod mill will be operating by early 1982. It is unclear exactly when the shredder and the shearer will be on the Employer's property.

⁵ This figure excludes those job classifications that the record shows are duplicates.

the Employer, these 22 employees will occupy 6 of the additional job classifications.⁶ Thus, we find that, by the date of issuance of the Acting Regional Director's decision, the Employer, should have employed a total of 76 employees in 21 different job classifications, or about 50 percent of the work force contemplated to be completed by July 1980 in nearly 60 percent of the anticipated classifications. Under these circumstances, we are satisfied that the Employer's present complement of employees is representative and substantial for purposes of directing an immediate election.⁷

2. Since the Acting Regional Director dismissed the petition as premature, he found it unnecessary to decide the issue of the unit placement of the laboratory technicians. The Petitioner contends, contrary to the Employer, that these employees should not be included in the requested production and

⁶ The Employer's technical director testified that 20 employees will be hired in the melt shop, and 2 of them will be hired in 2 different classifications in the rolling department. Based on the Employer's projected number of job classifications in the melt shop, and the number of employees to fill each classification, it appears that those 20 projected melt shop employees will fill at least 4 different classifications. Thus, the total number of new classifications that will be filled by the end of March 1980 will be six.

⁷ We note, in addition, that, by the time of the issuance of this Decision, which is 4 to 5 months from the date of the hearing, the Employer, by its own admission, will be fully operational in all departments except those that require the purchase of new equipment or the construction of new buildings. This is another reason to find that the petition should not be dismissed. See *Frolic Footwear, Inc.*, 180 NLRB 188 (1969); *The Celotex Corporation*, 180 NLRB 62 (1969).

The cases cited by the Acting Regional Director and the Employer are distinguishable. In *Some Industries Incorporated*, 204 NLRB 1142 (1973), at the time of the hearing the Employer employed only about 17 percent of the projected number of employees in less than 50 percent of the projected job classifications. In *Noranda Aluminum, Inc.*, 186 NLRB 217 (1970), the Board found the requested unit inappropriate and refused to order an election in a larger unit since the evidence showed that only 8 employees of a projected total of about 365 employees were employed in the rest of the plant at the time of the hearing. Finally, in *K-P Hydraulics Company*, 219 NLRB 138 (1975), the Board dismissed the petition because it found that the Acting Regional Director erred when he did not dismiss the petition after he found that the employee complement was not substantial or representative where the employer employed only 26 percent of its total projected work force in less than half of the projected number of classifications.

maintenance unit. Although at the time of the hearing the Employer did not have any laboratory technicians, it planned to hire two laboratory technicians within the next 4 to 5 months. According to the Employer, these two employees will spend approximately 75 percent of their time in a laboratory area separate from the other unit employees, using various electronic equipment to test the quality of samples from the melt shop. They will work under the immediate supervision of the metallurgist, and will perform the same duties as the laboratory technicians that were excluded from the production and maintenance unit when those employees were represented from 1975 to 1978 by another union. These laboratory technician employees will be required to have at least a high school education in chemistry, and will be considered a separate category into which the other unit employees cannot transfer.

Based on the above, we agree with the Petitioner, and find that the laboratory technicians lack sufficient community of interest with the production and maintenance employees to require their inclusion in the unit found appropriate herein, and we shall therefore exclude them.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(c) of the Act:⁸

All production and maintenance employees, including shipping, receiving, and warehouse employees employed at the Employer's Fontana, California, facility, excluding all office clerical employees, laboratory technicians, professional employees, watchmen, guards, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

⁸ The Intervenor agreed with the Petitioner's unit request