

Mercury Marine Division of Brunswick Corporation and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 30-UC-158

March 5, 1981

DECISION ON REVIEW AND ORDER

On July 9, 1980, the Regional Director for Region 30 issued his Decision and Order in the above-entitled proceeding, in which he dismissed the petition seeking to add by way of clarification three employees in the new job classification "Process Coordinator I" to the Petitioner's bargaining unit. Thereafter, the Petitioner timely filed a request for review of the Regional Director's Decision on the grounds that in denying its clarification request he made erroneous findings of fact and conclusions of law, particularly his conclusion that the three employees in the Process Coordinator I classification do not have a sufficient community of interest with the employees in the unit represented by the Petitioner to warrant their inclusion in the unit. Rather, he found such employees share a closer community of interest with employees in the Process Coordinator II and III classifications who are not in the unit.

On September 23, 1980, the Board by telegraphic order granted the request for review. Thereafter the Petitioner and the Employer filed briefs with the Board.

Subsequent to the filing of the petition, the parties stipulated and agreed that in lieu of a hearing in this matter the case should be decided based upon the transcript of an arbitration proceeding concerning the same facts, the exhibits received in that arbitration hearing, the briefs of both parties to the arbitrator's award, and any additional position statements the parties would submit in this matter. The Board has duly considered the submitted briefs by the parties, as well as the transcript, exhibits, and position statements in the arbitration proceeding.

Upon the entire record, including the parties' briefs and statements on review, the Board makes the following findings:

The Petitioner requests the inclusion of the three employees in the new job classification "Process Coordinator I" in the unit it represents as accretions thereto. The record shows that the Employer has entered into a series of collective-bargaining agreements with the Petitioner, the most recent of which has effective dates from June 19, 1978, to June 15, 1980, and provides in relevant part:

Article 1, Recognition
1.1 (Lodge 1947, Fond du Lac)

The Company recognizes the Union as the sole and exclusive collective bargaining agent for all production and maintenance employees, including all classifications in the Production Departments, the Production Tool Room, the Machine Shop, the Testing Department, the Maintenance Department, Buildings and Grounds, Oil Facility, the Foundry Facility, Die Cast Facility, Customer Service and Repair Departments, Floor Inspectors, Final Inspectors, and Salvage Inspectors in the Inspection Department, Time Recording Clerks, Lead persons, Mechanic Specialists, Cycle Counters, Distribution Facility, Shipping and Receiving Department, Investment Castings Facility, and all other production and maintenance departments which may be added to the collective bargaining unit in the future covered by this Agreement, (but excluding all executives, office and clerical employees, laboratory employees, professional employees, sales representatives, product development and testing personnel, layout inspectors, paint inspectors, final line inspectors, watchpersons, guards and supervisory employees as defined in the the Labor-Management Relations Act.)

The dispute involves the die-casting operation. Prior to October 1978, the setting up and operation of the die-casting machines was performed by bargaining unit employees classified as die-cast machine operators and setup persons. Beginning in October 1978, an electronically programmed system, called Unimate, was installed on a total of five machines. Each Unimate system operates either one or two machines. It sprays the die automatically, ladles molten metal in the chamber automatically, engages the injection ram, ejects the casting after the proper curing time, and deposits the finished casting in a basket which is then hauled away by bargaining unit personnel.

When the system was installed, the Petitioner's first grievance was filed alleging that operation of the system by a foreman was in violation of the collective-bargaining contract in that this was bargaining unit work. Subsequently, the Employer created a new position designated officially as "Process Coordinator I."¹ This action by the Employer gave rise to the second grievance again alleging that unit work was being performed by personnel outside the bargaining unit in violation of the contract.

Both grievances were subsequently the subject of an arbitration proceeding.² A hearing was held on November 8, 1979, and the grievances were denied by an award dated April 4, 1980. The arbitrator viewed the issue as one "involving possible violation of the collective bargaining agreement by the

¹ Hereinafter referred to as PC I's.

² FMCS No. 79K/17790; Grievances 17-50-78 and 17-17-79.

Employer in assigning bargaining unit work to the Process Coordinator I," and placed the burden of proving this allegation by a preponderance of the evidence upon the Union. In finding that the Employer had not violated the collective-bargaining agreement between the parties, he found that the Union had not met that burden of proof.

In its petition to the Board, the Petitioner seeks to clarify the unit by including the three employees described as PC I's on the basis that they share a community of interest with the unit employees. We agree.

Record facts show that the three employees known as PC I's who operated the Unimate system were originally part of the bargaining unit, two die-cast machine operators, and one die-cast setup employee. They still work in the same area as the unit employees, they share the same responsibility for quantity and quality of products,³ and occasionally they assist each other when trouble develops in their respective machines. This is to be expected, since they operate the same machines as the die-cast operators, the difference being that the PC I's use an electronic method and the other employees operate their machines manually.

The record further shows that the metal haulers, material handlers, setup men, die repair personnel, maintenance crew janitors, and other support personnel, servicing both manual and automatic machines, are all part of the same bargaining unit pursuant to the terms of the contract, and share the same overall supervision.

We also note that the PC I classification is a new one, and not utilized at other plants of the Employer, whereas the classifications of Process Coordinator II and III are.⁴ The record also shows that PC II's and PC III's have never constituted a part of the bargaining unit, are not assigned machines as are the PC I's, and do in fact operate as technical employees with supervisory authority.

The Regional Director found, and we agree, that the PC I's do not possess sufficient authority within the meaning of Section 2(11) of the Act so as to be classified as supervisors.⁵ The record shows only one instance of a verbal warning by one of the PC I's since the category was established and no written warning or other exercise of supervisory authority. Moreover PC I's have never

handled a plant grievance or "blue-tagged" a basket of finished cast parts.⁶

Nor are we persuaded by the reasoning of the arbitrator.⁷ As the Board stated in *Union Electric Company*,⁸ a unit classification petition is an appropriate proceeding for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement. In any event, the Board has held that issues involving appropriateness of unit and criteria are particularly within the Board's expertise.⁹

In view of all of the foregoing facts, we conclude that the three Process Coordinator I's constitute a proper accretion to the bargaining unit represented by the Petitioner.¹⁰

We find that the following constitutes a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including all classifications in the Production Departments, the Production Tool Room, the Machine Shop, the Testing Department, the Maintenance Department, Buildings and Grounds, Oil Facility, the Foundry Facility, Die Cast Facility, including Process Coordinator I's, Customer Service and Repair Departments, Floor Inspectors, Final Inspectors, and Salvage Inspectors in the Inspection Department, Time Recording Clerks, Lead persons, Mechanic Specialists, Cycle Counters, Distribution Facility, Shipping and Receiving Department, Investment Castings Facility, and all other production and maintenance departments which may be added to the collective bargaining unit in the future covered by an agreement, but excluding all executives, office and clerical employees, laboratory employees, professional employees, sales representatives, product development and testing personnel, layout inspectors, paint inspectors, final line inspectors, watchpersons, guards and supervisory employees as defined in the Labor-Management Relations Act.

⁶ "Blue-tagging" is a procedure wherein an entire load of product parts is rejected by a supervisor as inferior and lacking in quality. PC II's and PC III's exercise such authority.

⁷ There, the issue was whether unit work was being performed by personnel outside the bargaining unit. Here, the issue is whether the PC I's share a sufficient community of interest with other production and maintenance employees so as to warrant their inclusion in the bargaining unit.

⁸ 217 NLRB 666 (1975).

⁹ *Ortiz Funeral Home Corp.*, 250 NLRB 730 (1980).

¹⁰ *Manirowac Shipbuilding Inc. and the Manitowac Company, Inc.*, 191 NLRB 786 (1971); *Burns Security Systems, Inc.*, 188 NLRB 222 (1971).

³ While the PC I's received 2 weeks' training, it did not relate to the technical operation of the Unimate system.

⁴ Hereinafter called PC II and PC III.

⁵ *Sol Henkind, an Individual, d/b/a Greenpark Care Center, formerly known as Willoughby Health Related Facility*, 231 NLRB 753 (1977); *Tower Foods, Inc., d/b/a Tower of the Americas Restaurant*, 221 NLRB 1260, 1262 (1975).

ORDER

It is hereby ordered that the unit of production and maintenance employees represented by District No. 10, International Association of Machinists and

Aerospace Workers, AFL-CIO, at the Employer's Plant 17 in Fond du Lac, Wisconsin, be, and it hereby is, clarified by including therein its **employ**-ees classified as Process Coordinator **I's** who are employed by the Employer at that location.