In the Matter of INTERNATIONAL HARVESTER COMPANY, EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 61, PETITIONER

Case No. 32–RC–94.—Decided March 16, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the close of the hearing, the Employer moved to dismiss the petition. For reasons hereinafter stated under paragraph 4, the motion is denied.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel.*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations named below claim to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Petitioner seeks a unit consisting of all employees in the product engineering department, but excluding office and clerical employees, plant-protection employees, professional employees, field engineers, and technical employees, all supervisors as defined in the Act, as amended, and all other employees. The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, Local 988, Intervenor herein, agrees that the unit requested is appropriate. The Employer, however, contends that the unit is com-

*Houston, Reynolds, and Murdock.

posed of confidential employees; contains both skilled and unskilled workers; includes craft groups represented elsewhere in the plant, and is therefore inappropriate.

There is no bargaining history with regard to the product engineering department and there is no question, here, of severance from an established bargaining unit. Under the terms of a consent election, the Intervenor was certified by the Board on April 8, 1948, as the representative of the production and maintenance employees. Following an election ordered by the Board on October 19, 1948,[1] the Intervenor was also certified as the bargaining representative of the toolroom employees. The product engineering department was excluded from the unit in each case as well as from the ensuing contracts between the Intervenor and the Employer. It is, therefore, the only group at the Memphis plant without representation at this time.

The product engineering department is engaged in experimental work on new products and on the development and change of present designs. It is located in one shop which is physically separated from the rest of the plant. Unlike the other personnel, these employees are under the full supervision of the first engineer and are not subject to the control of the works manager. The 36 employees in the department include blacksmiths, machine operators, mechanics, machinists, lay-out men, sheet metal workers, learners, laborers, and a janitor. Some of these work classifications are found in other parts of the plant, but the product engineering group works solely upon experimental products and does not engage in regular production processes. Interchange is limited to the occasional use of machines in one department by employees of other departments. Employees in the unit sought by Petitioner are excluded from seniority lists by the terms of the present contract between the Employer and the Intervenor, although wage rates, hours and conditions of employment are uniform throughout the works.

The Employer's first contention is that the proposed unit is inappropriate because the work of these employees is highly confidential. The record does not support this contention and we find to the contrary. It appears that, while the work of the department is experimental, the department personnel have not been isolated from other employees nor notified that they were employed in a confidential status. Moreover, we have often held that employees who have access to secret business information but who do not act or assist in labor relations matters, are not confidential employees incapable of inclusion in a bargaining unit.[2]

[1] *Matter of International Harvester Company*, 79 N. L. R. B 1452.

[2] See *Matter of Gale Products*, 77 N. L. R. B. 31; *Matter of John Deere Dubuque Tractor Company*, 72 N. L. R. B. 656.

The Employer also maintains that the inappropriateness of the suggested unit is shown by the inclusion of skilled and unskilled workmen, and the fact that some of the work classifications in the department are also found in the remainder of the plant. However, the record shows clearly that these employees are a cohesive and well defined departmental group with separate supervision and working space, even though they do not constitute a craft. Furthermore, these employees are a residual group which must either constitute a separate unit or be indefinitely denied collective bargaining representation. We find, therefore, that these employees may properly constitute a separate bargaining unit.[3]

We find that the employees in the product engineering department of the Memphis works of the Employer, excluding office and clerical employees, plant-protection employees, professional employees, field engineers and technical employees, all supervisors as defined in the amended Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by International Association of Machinists, Lodge No. 61, or by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, Local 988, or by neither.

[3] See *Matter of American Security and Trust Co.*, 78 N. L. R. B. 927; *Matter of John Deere Dubuque Tractor Company*, 72 N. L. R. B. 656; *Matter of Potter & Rayfield, Inc.* 68 N. L. R. B. 576; *Matter of Detroit Incinerator Co.*, 45 N. L. R. B. 414.