

In the Matter of AMERICAN LOCOMOTIVE COMPANY, ALCO PRODUCTS  
DIVISION, EMPLOYER and UNITED STEELWORKERS OF AMERICA, CIO,  
PETITIONER

*Case No. 3-RC-492.—Decided November 16, 1950*

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William J. Cavers, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.<sup>1</sup>
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The appropriate unit:

The Petitioner seeks a unit of all salaried and hourly paid office, clerical, technical, and professional<sup>2</sup> employees employed by the Employer at its plant at Dunkirk, New York, excluding production and maintenance employees,<sup>3</sup> guards, and supervisors. The Employer and the intervening unions contend that these employees should constitute two units, one composed of office and clerical employees and another composed of technical employees.

<sup>1</sup> At the hearing, the hearing officer granted motions to intervene on the basis of a showing of interest to Office Employees International Union, A. F. L., herein called the Office Employees; and to International Federation of Technical Engineers, Architects and Draftsmen's Union, A. F. L., herein called the Federation.

<sup>2</sup> This classification was added by motion at the hearing to amend the petition. The Employer opposed the motion on the ground that the Petitioner could not have made the requisite showing of interest. It is well established that the showing of interest is an administrative matter not subject to collateral attack. We are satisfied that the Petitioner's showing of interest is sufficient.

<sup>3</sup> The Petitioner already represents the Employer's production and maintenance employees. There is no bargaining history covering the employees sought in this proceeding.

In *International Harvester Company, West Pullman Works*,<sup>4</sup> we said:

Under well-established Board principles, office and clerical employees may not appropriately be grouped with technical employees where any party objects to such a grouping.

Accordingly, we find that the office and clerical employees and the technical employees constitute separate appropriate units.

The parties are in substantial agreement as to the composition of the two units. The Employer, however, would exclude the cashier, the telephone and teletype operators, the nurses, and the buyers from the unit of office and clerical employees, and would exclude the operational planners, the time-study engineers, and the first class designers from the technical unit. The unions concerned contend that these employees should be included.

#### A. *The office and clerical unit*

1. *The cashier* signs checks written for the Employer. He has charge of a considerable sum in petty cash, and handles the Employer's banking business at local banking establishments. He does not deal with matters affecting labor relations, however, and takes no part in formulating the Employer's policies. The Employer would exclude the cashier as a representative of management. We do not, however, exclude such an employee "simply because he has the custody of company money."<sup>5</sup> We shall therefore include the cashier in the unit.

2. *The telephone and teletype operators* perform the usual duties of their classification. On occasion they may receive or send messages affecting labor relations. The Employer contends that under the circumstances they must be excluded as confidential employees. We have previously held, however, that the occasional dispatch of messages relating to labor matters is not alone enough to constitute telephone and teletype operators confidential employees.<sup>6</sup> We shall therefore include these employees in the unit.

3. *The buyers* purchase about six million dollars worth of material for the Employer's account each year. They negotiate for credit or replacements when material delivered is defective, and try to direct their profitable business to those suppliers who will give the Employer special consideration on orders of critical material. The Office Employees would include the buyers in the office and clerical unit, or, alternatively, place them in a separate unit. The Employer main-

<sup>4</sup> 90 NLRB No. 240.

<sup>5</sup> *Chrysler Corporation*, 58 NLRB 239.

<sup>6</sup> *Southern Alkali Corporation*, 84 NLRB 120; *Phillips Oil Company*, 91 NLRB 534.

tains that the buyers are representatives of management. As it appears that the buyers are authorized to make substantial purchases for the Employer, we find that they are representatives of management, and as such may not be accorded bargaining rights under the Act.<sup>7</sup>

4. *The nurses* are agreed by the parties to be professional employees. The Employer contends that they are also representatives of management because they work in the personnel office, enter medical data in the personnel files of other employees, and may be called upon to testify in compensation cases. As the nurses are not directly concerned with the Employer's labor relations, however, and have no part in formulating personnel policy, we find that they may be included in the unit of office and clerical employees.<sup>8</sup> In view of their professional status, we shall direct that they be permitted to vote as a separate group to ascertain whether or not they desire to be represented as part of the office and clerical unit.

### B. *The technical unit*

1. *Operational planners* study blueprints of the item to be produced, and plan the schedule and the methods of operation to be performed, endeavoring to devise the most economical production sequence possible. Piecework rates are set by these employees on the basis of data supplied by time studies made by other employees. An engineering degree or considerable practical experience is required for this kind of work.<sup>9</sup> Operational planners are paid from \$190 to \$350 a month.

The Employer contends that the planners are representatives of management because they may be called upon to defend their schedules to the employees or their bargaining representatives. The Petitioner and the Federation deny that the planners are managerial, and the Petitioner contends that they do not exercise even the degree of judgment necessary to qualify them as professionals. As it does not appear that the planners formulate, determine, or effectuate management policies to any substantial degree, we find, as we have in previous similar cases, that they are not managerial.<sup>10</sup> We agree, how-

<sup>7</sup> *Wise, Smith & Company, Inc.*, 83 NLRB 1019; *Westinghouse Electric Corporation*, 89 NLRB 8.

<sup>8</sup> *Union Electric Power Company*, 83 NLRB 872; *Westinghouse Electric Corporation*, 89 NLRB 8; *Westinghouse Electric Corporation*, 91 NLRB No. 40. To the extent that *Standard Oil Company (Indiana)*, 80 NLRB 1022 is inconsistent, it is hereby overruled.

<sup>9</sup> None of the present planners has an engineering degree, but one testified that he had 20 years' experience and had previously been superintendent of another plant.

<sup>10</sup> *General Electric Company*, 89 NLRB 726, and cases cited therein. We do not agree with the Employer that the nature of its business is so much more varied than that of General Electric Company as to render this case distinguishable on that ground.

ever, with the Employer's contention that the planners, by reason of their special knowledge and constant exercise of independent judgment, are professional employees. Accordingly, we shall make no present determination with respect to the unit placement of these employees, pending the outcome of a self-determination election which we shall direct.

2. *Time-study* engineers observe operations in the production area and, after applying fatigue allowances and other standard modifying data, arrive at the amount of time to be allowed for various individual operations. The standards established by these employees may be the subject of grievances, in the settlement of which the time-study employees are required to defend their results. None of the present incumbents is a college graduate, but a college degree in engineering or 3 to 5 years' experience is required. Salaries of these employees range from \$250 to \$350 a month.

The Employer contends that these employees are professional and are also representatives of management; the Petitioner and the Federation oppose both contentions. We do not believe the work performed by these employees differs substantially from that performed by time-study employees involved in several recent cases.<sup>11</sup> We find, as we did in those cases, that the time-study employees are not managerial but are professional. Accordingly, we shall include them in a professional voting group.

3. *First class designers* are responsible for the mechanical design of all equipment manufactured. The designers must take into account the tools available at the plant, and must reconcile, as economically as possible, the requirements of the customer and the safety codes prescribed by local regulation or by insurance companies. The designers endeavor to keep costs, including labor costs, to a minimum, and recommend subcontracting for those items which can be bought more cheaply than they can be made by the Employer. In the case of a new product, they participate in the conferences at which the Employer's policies regarding this article are formulated. After a design has been completed, the first class designer advises and instructs the section supervisors who are in charge of the drafting rooms where drawings are made for the use of other employees.

All parties are in agreement that these employees are professional. The Employer contends that as they work in close conjunction with, and occupy positions equivalent to, the rating engineers,<sup>12</sup> who all the parties agree are managerial, they should be excluded as repre-

<sup>11</sup> *General Electric Company, supra; Westinghouse Electric Corporation, 89 NLRB 8, and cases cited therein.*

<sup>12</sup> Rating engineers are responsible for the thermal capacity of the equipment.

sentatives of management. In view of the fact that these employees help formulate policy regarding the type of orders the Employer will accept, and decide the amount and quality of material and labor to be employed in filling such orders, we believe that their interests are more closely allied with those of the management than with those of the employees. Accordingly, we shall exclude first class designers from the professional voting group.

In accordance with the foregoing determinations, we find that all office and clerical employees at the Employer's Dunkirk, New York, plant, including the cashier and the telephone and teletype operators, but excluding the buyers, production and maintenance employees, guards, and supervisors; constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act. We further find that all technical employees employed by the Employer at its plant at Dunkirk, New York, excluding production and maintenance employees, guards, and supervisors; constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

In order to ascertain the desires of the professional employees as to inclusion in a single unit with nonprofessional employees, we shall direct separate elections in the following voting groups, excluding from each all other employees and supervisors:

- (1) All registered nurses.
- (2) All operational planners and time-study engineers.

The employees in each voting group will be asked two questions on their ballot:

- (A) Do you desire to be included with nonprofessional employees in a single unit for the purpose of collective bargaining?
- (B) By which union, if any, do you desire to be represented?

If a majority of the professional employees in either separate voting group votes "yes" to the first question, indicating their wish to be included in the unit with the nonprofessional employees, the employees in that group will be so included. Their votes on the second question will then be counted together with the votes of the nonprofessional employees to decide the representative for the single combined unit.

[Text of Direction of Elections omitted from publication in this volume.]