

and a welder, who works with the millwrights under the supervision of the machine shop foreman. Working in the toolroom under the toolroom foreman are tool and die makers who, using the tools of their craft, work from blueprints to close tolerances; welders who work on dies and fixtures for the die makers; and die service and die chipper employees, who chip and grind dies to fit patterns to close tolerance. Associated with the tool and die makers is a heat treat man and helper, who anneal, harden, and test tools and parts for tool makers in the electric and gas-fired heat treat furnaces; and a skilled grinding machine and dust box maintenance man who, using standard repairman's tools, removes and replaces motors, and repairs and maintains dust boxes, grinding and polishing machines and other maintenance machines at the plant. Gauge makers, who work in the gauge room, are former tool makers of the Employer who do work, under the toolroom foreman, similar to that of the tool makers, but requiring greater precision.

It seems clear that employees in the toolroom, machine shop, and gauge room set forth above, including their apprentices and assigned helpers, but excluding supervisors, constitute an identifiable, homogeneous group of skilled employees who may constitute a traditional separate unit for bargaining purposes, notwithstanding their prior inclusion in an over-all unit of production employees, if they so desire.⁴ We shall direct an election among them. We shall make no final unit determination at this time. If a majority of the employees select the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit, and we shall certify the Petitioner as their exclusive bargaining representative.

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

⁴ *Layne & Bowler, Inc.*, 90 NLRB 1872; *Victor Metal Products Corporation*, 90 NLRB No. 144, not reported in printed volumes of Board decisions. We are not persuaded that there is such a degree of integration among the Employer's several operations, as the Employer contends, as to preclude the severance of this proposed unit. *International Harvester Company, Harvester Division, East Moline Works*, 90 NLRB 1905, and cases cited therein.

ALLEN WALES ADDING MACHINE DIVISION OF THE NATIONAL CASH REGISTER COMPANY and ROBERT RIBBLE, PETITIONER and LODGE 607, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 3-RD-42*.
June 18, 1951

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Ralph E. Kennedy, 94 NLRB No. 192.

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 National Labor Relations Act.

2. The Petitioner, an employee of the Employer, asserts that the Union, the currently recognized bargaining agent, is no longer the bargaining representative of certain employees of the Employer as defined in Section 9 (a) of the Act.

3. The Union contends that its current contract with the Employer bars consideration by the Board of the instant petition. We do not agree. The present contract between the parties was executed on June 14, 1950, for a period of 2 years with provision for automatic renewal in the absence of written notice, and contains the following clause:

All employees who on June 14, 1950 at 6 P. M., are members of the Union and all employees who thereafter become members shall, as a condition of employment, remain members of the Union until May 5, 1951. On May 8, 1951 all employees who are members of the Union and all employees who thereafter become members shall, as a condition of employment, remain members of the Union until May 5, 1952.

The Union, before the execution of the June 14, 1950, contract, was authorized, pursuant to the provisions of Section 9 (e) of the Act, to negotiate a union-security agreement with the Employer.¹ The maintenance-of-membership clause incorporated into the June 14 contract, however, exceeds the limited form of union-security agreement permitted by the statute through its failure to provide a period of at least 30 days following the effective date of the agreement or the beginning of employment for an employee to refrain from membership. Accordingly, it cannot serve to bar consideration of the instant petition by established rule.² The Union's contention that the illegality of the clause was purged by amendment of the contract at a later date is equally without merit as to the contract bar question. The parties, on November 17, 1950, modified the maintenance-of-membership clause by including a period of 30 days from June 14, 1950, or from the date of employment in which employees might withdraw or refrain from membership. The petition in this case was filed on October 30, 1950. Assuming correction of the illegality of the contract provision was

¹ An election under Section 9 (e) was held in May 1948, in which the Union won the authority to execute a union-security agreement. This election took place in a unit of all production and maintenance employees excluding the model room employees who are concerned herein.

² See *Shepherd Manufacturing Company, Inc.*, 90 NLRB 2196 and cases cited therein.

thus accomplished retroactively, the correction did not take place until after the petition had been filed and accordingly cannot act to preclude a present determination of representatives.³

The Board finds that 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 Petitioner requests that a decertification election be held in a unit of all model makers, model assemblers, and model inspectors at the Employer's Ithaca, New York, adding machine plant. The Employer agrees with the Petitioner's unit request, while the Union contends the only appropriate unit is one merging the model room employees with production and maintenance employees.

In 1943, the Employer recognized the Union as representative of its production and maintenance employees in a unit excluding the model room employees who are the subject of this petition. Contractual relationships have been continuous since that time. In 1948, following a consent election, the Union won union-security bargaining rights in the same unit of production and maintenance employees excluding the model room. In June 1949, as the result of another consent election, the Union was separately certified as representative of a unit limited to model makers, model assemblers, and model inspectors. Model room employees were thereafter included in the same unit with production and maintenance employees in collective bargaining contracts between the Union and the Employer.

The Employer's Ithaca plant has a working force of approximately 750 employees, of which 12 are in the classification sought to be decertified by the Petitioner. Four model makers A, 6 model makers B, 1 model assembler, and 1 model inspector work in the model room which occupies a separate location on the second floor of the Employer's plant. Experimental machines and parts for custom made special machines are fabricated in this department, which is under the separate supervision of a general foreman whose jurisdiction is limited to the group in question. No production work is done in the model room and there is virtually no interchange with personnel engaged in production processes. Although the Employer does not at present have an apprenticeship program in operation in the model room there is no question, and the parties agree, that the work done by these employees is of a highly skilled type. Model makers A and B make dies and special parts and are comparable in skill to tool and die makers, while the assembler and the inspector perform the duties indicated by those job titles. A bench hand B, who does odd jobs and is in the process of learning the skills of a model maker, and a

³ See *Anaconda Wire and Cable Company*, 90 NLRB No. 5 and cases cited therein.

model engineer, who advises on clearances, tolerances, and changes in parts, also work in the model room.

The Union contends that the model room employees constitute only a portion of the production and maintenance unit and do not comprise, of themselves, an appropriate unit. In support of this argument, the Union notes the similarity of skills and rate of pay of the model makers and of tool and die makers working in the toolroom at the plant, and of the bench hand in the model room and the bench hands in the production section as well as the bargaining history in a plant-wide unit. The Employer's toolroom is located near the model department and is equipped with the same types of machinery as the latter. The tool and die makers who are assigned to the toolroom are ranked in the same labor grade as the model makers and possess comparable, if not in some cases identical, skills. The functional operations of the toolroom, however, differ from those of the model room in several respects. Thus, the toolroom is engaged in the production of tools for use in production of the Employer's standard products, while the model maker "hand makes" individual parts and pieces for experimental or custom built machines of a special nature. The model room, because of its experimental work, is closed to all employees except those assigned to that department, while the toolroom is not so restricted. Despite the similarity of skills and work background of employees in the two groups there is no interchange of model makers and tool and die makers. Seniority at the Employer's plant is determined by length of service in each job classification.

Although bench hands, in the past, have transferred to and from the production departments, the same general situation applying to model makers is true of this classification. Bench hands assigned to production work do highly repetitive operations such as straightening, and filing on the same parts as they are produced. The bench hand in the model room, however, does more individualized work on pieces to be used in the models.

On the above facts it is clear that a unit restricted to employees in the Employer's model room would be appropriate in the absence of any history of collective bargaining on a plant-wide basis. Indeed the Board has conducted an election in precisely this unit of these employees. Moreover, for 6 years prior to the inclusion of these workers in the contract covering production and maintenance employees, the model room personnel were specifically excluded from the basic production and maintenance unit. There has been some bargaining at this plant, however, on an over-all basis. It is the contention of the Union that this bargaining demonstrates that a plant-wide bargaining unit has been established herein, and that the requested unit is inappropriate because it comprises a noncraft group not entitled to severance

from the larger unit. We find no merit in this contention. To establish the existence of an over-all bargaining unit at the Employer's plant, it is necessary to accord final and conclusive weight to the fact that, only a year before this petition was filed, the Union and the Employer merged the model room personnel into the production and maintenance unit covered by their contract. The position of the Union, accordingly, rests upon the limited 1-year period at the plant which followed the inclusion of model room employees in the broader unit without Board sanction.

While the Board has, under certain circumstances, found that a previously appropriate unit has later, through merger, become an inappropriate grouping, no adequate basis for such a conclusion appears in the instant case.⁴ In our opinion, plant-wide bargaining for the brief period of time involved does not constitute such a decisive demonstration of bargaining patterns as to foreclose a timely and effective protest from the employees concerned. Such a protest, of course, is best evidenced by the petition for decertification of the Union as representative of the model room which is now before us.

In view of the nature of the work in which the model room employees are engaged, their segregation, lack of interchange with production and maintenance personnel, separate supervision, and the absence of any decisive history of bargaining on a broader basis, the Board finds that the model makers, assemblers, and inspectors are a homogeneous, skilled, cohesive, and well-defined departmental group who may properly constitute a separate bargaining unit for the determination of a question concerning representation.⁵

There remains the question of the inclusion of the bench hand and the model engineer in such a unit. Neither of these employees was expressly included in the unit requested by the Petitioner and the record does not clearly show the parties' positions as to these employees. It appears that the model engineer and the bench hand, however, were included in the model room unit when the consent election was held in that unit in June 1949.⁶ As these employees work entirely within the model room and share the conditions of employment of that group, we shall include the model room bench hand and the model engineer.

Accordingly, the Board finds that all model makers, model assemblers, and model inspectors at the Employer's Ithaca, New York, plant, including the model room bench hand and the model engineer, but excluding office and clerical employees, guards, professional employ-

⁴ Cf. *McDonnell Aircraft Corporation*, 93 NLRB 1268. In that case the employees involved had been included in the broader unit without protest for a period of over 7 years.

⁵ See *International Harvester Company*, 82 NLRB 185.

⁶ The model engineer formerly worked in the assembly department of the plant and transferred from assembly to his present position.

ees, and all supervisors as defined in the amended Act, may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. We shall direct an election among these employees. If a majority of the employees vote against the Union, the latter organization will be decertified as representative of the Employer's model room. If, however, a majority of the employees cast their ballots for the Union, they will be taken to have indicated their desire to be a part of the production and maintenance unit and the Union may bargain for model room employees as a part of that unit.

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

MEMBERS HOUSTON and STYLES, dissenting:

We cannot agree with the conclusion of our colleagues that the model room employees may now constitute a separate appropriate unit, as these employees have been effectively merged into the production and maintenance unit. Although the Union was certified in June 1949 as the bargaining representative of all model makers, model assemblers, and model inspectors, it never bargained for them separately. These employees, who had previously been unrepresented, were instead immediately merged into the larger unit already represented by the Union. Apparently none of the model room employees objected at that time to their inclusion in the plant-wide unit.

Our colleagues, however, would now fractionalize this more comprehensive unit in disregard of the merger and of the Board's requirements for severance from an existing plant-wide unit. As to the merger, the record is clear that the only bargaining history affecting the model room employees is one of inclusion for the past year and a half in the production and maintenance unit. Not only is this merger of substantial duration,⁷ but it is the type of consolidation which the Board has heretofore indicated it would approve.⁸ Furthermore, severance of these employees ignores the transfer of bench hands to and from the production departments and disregards the similarity between the skills, work backgrounds, and rates of pay of the model makers and the tool and die makers working in the tool-room, who, as part of the existing production and maintenance unit, are also represented by the Union.

Accordingly, as the model room employees have been effectively merged with the production and maintenance employees and as they comprise only a segment of employees possessing identical skills and

⁷ *General Mills, Inc., Sperry Division*, 91 NLRB 984; *American Radiator and Sanitary Corporation*, Case No. 9-RD-69 (unpublished).

⁸ *John Deere Harvester Works*, 66 NLRB 1078; *Deere & Company*, 57 NLRB 411.

performing comparable work, we perceive no basis for establishing them as a separate unit.⁹ We would therefore dismiss the petition.

⁹ *McDonnell Aircraft Corporation*, 93 NLRB 1268; *Kaiser-Frazier Corporation*, 93 NLRB 892; *Milprint, Inc.*, 90 NLRB 98. But cf. *General Aniline & Film Corporation, Anasco Division*, 80 NLRB 1352, where the Board held that a similar unit could appropriately be severed from a production and maintenance unit and included in a toolroom unit.

REPUBLIC STEEL CORPORATION *and* UNITED STEELWORKERS OF AMERICA,
CIO, PETITIONER. *Case No. 10-RC-1084. June 18, 1951*

Decision and Direction of Election

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

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Reynolds].

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 organization involved claims to represent certain 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) (1) and Section 2 (6) and (7) of the Act.
4. The Petitioner seeks to represent a unit composed of all office and clerical employees at the main office of the Employer's Gadsden, Alabama, plant, excluding employees in the invoice, industrial engineering, industrial relations, and combustion departments, plant clerical employees,¹ employees of the Truscon Steel Company, guards, professional employees, and all supervisors as defined in the Act. The Employer asserts that the unit is inappropriate, contending that, in addition to the exclusions requested by the Petitioner, as to which the parties agree, all other employees should also be excluded on the ground that they are either confidential, supervisory, or professional employees.

The clerical employees in the Gadsden offices do routine clerical tasks, maintaining records, posting figures in ledgers, preparing accounts, computing payrolls, and performing the Employer's local ac-

¹ The record shows that two *inventory clerks* and three *production clerks*, who are stationed in plant production areas, do not work with the employees in the requested unit. In accordance with the Employer's contention, therefore, we find that they are plant clericals, and we shall exclude them from the office clerical unit and, in keeping with the Board's practice, leave them in the existing production and maintenance unit.