

NATIONAL ANILINE DIVISION, ALLIED CHEMICAL AND DYE CORPORATION and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, PETITIONER. *Case No. 3-RC-1029. January 12, 1953*

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 John Weld, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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 Murdock].

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.

3. The Employer and District 50, United Mine Workers of America, Local 12330, herein called the Intervenor, contend that their current contract constitutes a bar to this proceeding. The Petitioner opposes this contention on the ground that this contract was prematurely extended. The agreement was executed on June 28, 1950, to be effective until June 28, 1952. On January 5, 1951, the parties concluded a supplemental agreement extending their contract until June 28, 1954. The record does not establish that collective-bargaining agreements exceeding 2 years' duration are customary in this industry. Assuming, *arguendo*, that the 1951 supplement was not a premature extension, the contract will have been in effect at least for a full 2-year period before an election is held in this proceeding. In the absence of proof of any other custom in this industry, therefore, under established Board policy this contract cannot bar a present determination of representatives.² Accordingly, we find 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.³

¹ After the close of the hearing the Employer filed a motion to correct the transcript of testimony. The Petitioner opposed the motion in all respects, except as to correction of misspelled words. As to the corrections to which the Petitioner does not object, the Employer's motion is hereby granted and the record is hereby amended to conform to the motion. Because any changes in the remaining portions of the record sought to be corrected would not affect our decision herein, we find it unnecessary to rule on them. *Parsons Corporation*, 86 NLRB 74

² *International Brick Co.*, 91 NLRB 1428

³ The Employer's motion to dismiss the petition on the ground that the petition does not set forth a demand for recognition and a refusal is denied. *The Great Atlantic & Pacific Tea Co.*, 96 NLRB 660, *American Fruit Growers Inc.*, 101 NLRB 740

4. The Petitioner seeks a unit of the maintenance and construction employees at the Employer's Buffalo, New York, plant; in the alternative it requests the establishment of 16 separate craft units encompassing substantially the same employees. The Employer and the Intervenor oppose these requests and assert that because of the integration and interdependence of the Employer's operations, the contrary bargaining history, and the alleged absence of any true craft system at the plant, only a plantwide production and maintenance bargaining unit is appropriate.

At its Buffalo plant the Employer produces bulk chemicals, such as aniline oil, muriatic acid, phthalic acid, anhydride, maleic acid, triphenyl-methane colors, detergents, intermediates, and heavy tonnage dyes. The basic raw materials used are benzene, naphthalene, chlorine, and caustic soda. The plant consists of 75 to 100 buildings spread over an area of approximately 100 acres. These buildings are closely coordinated in the production process and are to a large measure connected by miles of pipes which carry the chemicals and intermediates to them.

Overall personnel totals 2,500, of whom 1,700 are hourly paid. Of the latter about 700 work in the operations department, headed by the general superintendent for operations, and about 650 employees, most of whom are covered by the petition here, are employed in the construction and maintenance department, headed by the superintendent for construction and maintenance. There is a considerable measure of cooperation and coordination between the work of the employees in the two departments, required by the continuity of the plant operations and their hazardous nature. The flow of production and the uninterrupted work of the operators is dependent on the day-by-day maintenance, repair, and replacement work of the mechanical employees, some of whom are for greater efficiency assigned to various areas in the plant, away from their craft shops. However, the work of the two employee groups is clearly distinguishable, basically different in nature, and separately supervised; there is no interchange of employees from one such group to the other. The only transfers from one department to another occur at times of economic layoffs, when certain mechanical employees, who have achieved and retained seniority in the operations department before qualifying as mechanical workmen and entering the other department, temporarily return to operating work to avoid layoffs. In these circumstances, and on the entire record, we do not believe that the integration of operations and functions at this plant is sufficient to preclude separate representation of craft employees. Accordingly, we find no merit in the contention that only a plantwide unit is appropriate, and shall consider the other issues raised by the petition.⁴

⁴ *Mathieson Chemical Corporation*, 100 NLRB 1032.

The employees whom the Petitioner seeks to represent are garage mechanics, blacksmiths, carpenters, electricians, instrument and scale mechanics, machinists, field machinists, painters, pipefitters, pipe coverers, riggers, sheet metal workers, welders, truck drivers, crane engineers, bricklayers, boilermakers (only if included in a multicraft unit), and their apprentices. These employees must undergo an extensive apprenticeship training in their respective trades, to be taken in the plant and of 30 months' duration. Occasionally this period may be reduced in cases of apprentices of special ability and experience, and sometimes expert tradesmen are hired from the outside, in which case they get a few months additional training to acquaint them with the Employer's operations. The mechanical employees, as a group, maintain, repair, replace, and install the production and operations equipment and machinery used throughout the plant, such as high pressure autoclaves, chemical reactors, tanks, stills, and filters. Most of this equipment is unique and much of it is made to the Employer's particular designs and specifications. In the various categories, they perform skilled duties, according to the usual responsibilities of their standard classifications, using the tools of their trades which they must furnish themselves. For example, the pipefitters lay out, cut, bend, thread, fit, install, and hang pipes; the field machinists install and repair machinery and mechanical equipment, align equipment, shafting and drives, diagnose and correct engine difficulties, etc.; the carpenters install, repair, and fabricate buildings, equipment, and accessories constructed of wood or wood substitutes, using carpenter's hand and shop tools and machines, and perform all work commonly performed by carpenters; the sheet metal workers lay out, assemble, form, fabricate, install, and repair pipe, equipment, and accessories made from light gauge metals, screens, and metal substitutes. A booklet, prepared jointly by the Employer and the Intervenor and issued on June 28, 1950, under the title "Job Classifications," provides that the mechanical employees must be journeymen skilled in a trade requiring an extended period of training and practice, thoroughly familiar with the use and application of the tools used in the trade, and capable of executing without close supervision the layout, fabrication, and installation of work of their trades.

It is clear therefore that these employees exercise skills which require a high degree of aptitude and specialized training. It is true, as the Employer asserts, that many of them work alongside of and in close association with the operators and their supervisors, and are at times assigned to work in areas away from their craft shops. These facts do not detract from the essential differences between their work and that of the production employees.⁵ On these facts, and on the

⁵ *Ethyl Corp.*, 101 NLRB 435.

entire record, we find that the various categories sought by the Petitioner—except for the few discussed below—are engaged in the work of the traditional crafts which the Board has consistently recognized as entitled to separate representation.

We do not agree, however, with the Petitioner's original contention that the severance of a multicraft unit is warranted in this case. The bargaining history of the Employer shows that the Intervenor was certified as representative of the employees on a plantwide basis in 1942. Since 1943, it has maintained successive bargaining agreements covering substantially all production and maintenance employees. For about 5 years, ending in 1947, the welders—16 or 17 in number—were separately represented by the Associated Welders of Western New York, Inc.;⁶ since 1947 the 4 or 5 leadburners have been separately represented by the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, AFL.⁷ In the face of this substantial history of collective bargaining on a predominantly plantwide basis, we find, in accordance with established Board policy, that a multicraft unit is not appropriate now.⁸

We find, however, pursuant to the Petitioner's alternative request, that the carpenters, electricians, instrument and scale mechanics, machinists (including garage mechanics), field machinists, painters, pipefitters, sheet metal workers, welders, truck drivers, and bricklayers, constitute well defined, homogenous groups, such as the Board has consistently held may, if they so desire, form separate appropriate units, despite their past inclusion in broader bargaining units.⁹ They may, of course, also remain part of the existing plantwide unit. We shall, therefore, make no final unit determination pending the outcome of the elections directed below.

The riggers rig, move, and place large and small units of machinery, piping, supports, and equipment. Although through their apprenticeship-training period they acquire skills distinct from those of the operators in the plant, it does not appear that they individually possess or exercise skills different from those of riggers to whom the Board does not accord the right of separate representation on a craft basis.¹⁰ Therefore, because these riggers are not craftsmen in the Board's usual definition of the term, we hereby deny the Petitioner's request for an election among them.

⁶ *National Aniline Division, Allied Chemical and Dye Corp.*, 40 NLRB 1351.

⁷ *National Aniline Division, Allied Chemical and Dye Corp.*, 71 NLRB 1217.

⁸ *United States Time Corp.*, 86 NLRB 724

⁹ *Mathieson Chemical Corp.*, 100 NLRB 1032 (electricians, pipefitters, welders); *Mathieson Chemical Corp.*, 101 NLRB 274 (carpenters); *Certain-Teed Products Corp.*, 78 NLRB 910 (field machinists-millwrights); *Mathieson Chemical Corp. (Doe Run Plant)*, 100 NLRB 166 (instrument and scale mechanics); *Goodyear Synthetic Rubber Corp.*, 99 NLRB 382 (painters and sheet metal workers); *Cities Service Refining Corp.*, 83 NLRB 890 (machinists and garage mechanics); *Standard Oil Company of California*, 79 NLRB 1466 (bricklayers); *Phillips Oil Co.*, 94 NLRB 1438 (truck drivers).

¹⁰ *Mathieson Chemical Corp.*, 100 NLRB 1032.

We reach the same conclusion with respect to the pipe coverers in this plant. They prepare and install insulation materials and covering around pipes and equipment and bind and seal covering. The Board has consistently held that employees performing such work are not craftsmen and therefore may not be severed from existing production and maintenance units.¹¹

The crane engineers operate mobile steam, gasoline or diesel buckets, scoops and hoisting cranes, make minor repairs and adjustments on their equipment, inspect it for safe condition, and do work commonly performed by crane engineers. In several cases involving employees performing duties similar to those of the crane engineers here involved the Board has held that crane operators are not craftsmen.¹² On the facts before us in this record, we perceive no persuasive reason for departing from precedent, and we shall therefore leave the crane engineers in the existing unit.

We shall at this time direct that separate elections be held among the employees at the Employer's Buffalo, New York, plant, excluding from each voting group all other employees and all supervisors¹³ as defined in the Act:

- (1) All carpenters and their apprentices.
- (2) All electricians and their apprentices.
- (3) All instrument and scale mechanics and their apprentices.
- (4) All machinists and garage mechanics and their apprentices.
- (5) All field machinists and their apprentices.
- (6) All painters and their apprentices.
- (7) All pipefitters and their apprentices.
- (8) All sheet metal workers and their apprentices.
- (9) All welders and their apprentices.
- (10) All truck drivers and their apprentices.
- (11) All bricklayers and their apprentices.¹⁴

If the majority of the employees in any of the voting groups established under (1) to (11) select the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit, and the Regional Director conducting the elections is instructed to issue a certificate of representation to the Petitioner as the labor or-

¹¹ *Matheson Chemical Corp.*, *supra*

¹² *International Paper Co.*, 94 NLRB 500; *Phillips Oil Co.*, 94 NLRB 1438.

¹³ Contrary to the contention of the Employer and the Intervenor, the Petitioner asserts that the "pushers" are supervisors and should be excluded from any unit. The record shows that these men, who assist the craft foremen in the exercise of the latter's functions, have no authority to hire, discharge, or discipline, or effectively to recommend any such action. Accordingly, we find that the pushers are not supervisors as defined in the Act, and they are hereby included in each voting group wherever found.

¹⁴ In the blacksmith classification there is only one employee. Because alone he could not constitute a separate bargaining unit, we shall not direct an election in his classification. *Johns Manville Production Corp.*, 98 NLRB 748. The boilermakers also appear to be pure craftsmen. The Petitioner took the position that it wished to represent this category as part of a multicraft unit, its original unit request, or not at all.

ganization selected by the employees in such groups, which the Board in such circumstances finds to be separate units appropriate for the purposes of collective bargaining.

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

MORGANTON FULL FASHIONED HOSIERY COMPANY, HUFFMAN FULL FASHIONED HOSIERY MILLS, INC.¹ and THOMAS EDGAR PARKS, PETITIONER, and LOCAL UNION No. 161, UNITED TEXTILE WORKERS, AFL.
Case No. 11-RD-36 (formerly 34-RD-36). January 12, 1953

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 Robert Cohn, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

The Union contends that the petition should be dismissed on the ground that it was inspired and fostered by the Employer, through its supervision, alleging that the petition was circulated by supervisors, with the assistance, knowledge, and acquiescence of the Employer.

Although the Board normally excludes from representation proceedings evidence relating to unfair labor practices, the Board believes that this rule should not be applied to preclude an investigation as to the relationship of a decertification petitioner to the employer. The precise language of Section 9 (c) (1) (A) of the Act indicates clearly that decertification proceedings provide a remedy exclusively for and on behalf of employees, and not of employers.³ With this principle in mind, the Board cannot, as a matter of policy, permit an employer to do indirectly, through instigating and fostering a decertification petition, that which we would not permit him to do directly.⁴ Accordingly, we agree with the hearing officer's ruling excluding

¹ Huffman Full Fashioned Hosiery Mills, Inc., is a wholly owned subsidiary of Morganton Full Fashioned Hosiery Company, the two of which constitute a single Employer within the meaning of Section 2 (2) of the Act.

² The Union excepted to the hearing officer's ruling revoking a *subpoena duces tecum* issued by the hearing officer, by means of which the Union sought to introduce into evidence the form of the petition circulated among the Employer's employees in order to attack the validity of the instant showing of interest. We have repeatedly held that a petitioner's *prima facie* showing of interest is an administrative matter, not subject to direct or collateral attack, and we therefore sustain the hearing officer's ruling. See *Stokely Foods, Inc.*, 81 NLRB 1103.

³ *Clyde J. Merris*, 77 NLRB 1375.

⁴ See *Knife River Coal Mining Company*, 91 NLRB 176; *Wood Parts, Inc.*, 101 NLRB 445.