

As already stated, there is an established line of progression from the positions of field engineer and inspection engineer to the position of assistant staff engineer. Assistant staff engineers are currently represented by the Petitioner as part of its professional unit. We find, therefore, that the employees herein sought by the Petitioner may be properly included in the existing professional unit. We shall direct an election by secret ballot in the following voting group:

All inspection engineers, field engineers, and industrial engineers at the Employer's Whiting refinery, but excluding nurses, research engineers in the engineering research department, all other employees, guards, and supervisors as defined in the Act.

If a majority of the employees in this voting group vote for the Petitioner, they will be taken to have indicated their desire to join the employees in the existing professional unit. The Petitioner may bargain for them as part of such unit, and the Regional Director is instructed to issue a certificate of results to that effect. If, however, a majority vote for the Intervenor, they will be taken to have indicated a desire to remain a part of the Intervenor's existing unit, and the Regional Director is instructed to issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

Member Beeson took no part in the consideration of the above Decision and Direction of Election.

AMERICAN BAKERIES COMPANY, d/b/a TAYSTEE BREAD COMPANY *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 345, AFL, Petitioner. Case No. 32-RC-661. March 11, 1954

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, 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 employees of the Employer.¹

¹Bakery and Confectionery Workers Union, Local 149, AFL, herein termed the Intervenor, was granted permission to intervene at the hearing.

3. No 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, for the following reasons:

The Petitioner seeks a unit of all maintenance employees at the Employer's Memphis plant. The Employer and the Intervenor oppose the granting of an election on the ground that the petition requests an inappropriate unit.

There are approximately 230 employees in the Employer's Memphis plant of whom about 150 are engaged in production and maintenance work or are in allied work classifications such as stock clerk, freight truckman, raw-stock man, and porter. The Employer has 9 regular maintenance employees and 1 temporary worker in the maintenance section. These employees are under the supervision of the chief engineer who, along with the production superintendent, reports to the plant manager. Maintenance personnel work through the entire plant and are in frequent contact with production workers. Their duties consist, generally, of keeping the plant machines in operation and making necessary repairs and adjustments. They set up machines as well as move them and may do an incidental amount of carpenter or electrical work. The maintenance employees receive frequent assistance in this work from the production employees and the latter, indeed, may make repairs and adjustments without recourse to the maintenance group. Tools for such purposes are kept in locations accessible to both production and maintenance groups.

All maintenance employees now at the plant were hired without training in any particular craft and were instructed on the job. The hours and general working conditions of both production and maintenance employees are the same and wage rates for maintenance personnel are in the same general range as those of production workers. Contrary to the contention of the Petitioner, the record does not establish that these employees possess skills of a type and degree sufficient to attain craft status and they serve no apprenticeship period.

Since 1940 the Employer and the Intervenor have signed successive contracts covering a unit consisting of all production employees. These contracts are negotiated yearly by a negotiating committee of the Memphis bakeries which meets with the Intervenor. The terms of the proposed contract are accepted or rejected by the Intervenor's membership and individual contracts are signed by the separate bakeries. The employer bargaining group is not a formal association and the terms of the contract negotiated, are not binding upon the individual employers. The pattern, however, has been one of consistent approval of the contracts by the individual employers. These contracts, with the exception of that signed by the Employer, uniformly cover a unit of all production and maintenance employees. The exclusion of maintenance employees at the

Employer's plant alone arose as a result of the membership of the Employer's former chief engineer in Operating Engineers Local No. 92. Because of the type of boiler formerly used at the Employer's Memphis plant, a licensed engineer was required by city ordinance to be employed at the plant. The former chief engineer, a licensed engineer employed because of this requirement, persuaded the Employer to contract separately with the Operating Engineers, to which he belonged, for its maintenance personnel. Despite this separate contract arrangement, however, little or no negotiations were carried on between the Employer and the Operating Engineers and their contracts covering the Employer's maintenance personnel were merely revised yearly to reflect those changes in the contract negotiated between the citywide employer group and the Intervenor concerning maintenance employees at the other bakeries. In or about 1951 a new boiler was installed at the Memphis plant making the requirement of a licensed engineer no longer applicable, and the former chief engineer left the employment of the Employer. The Operating Engineers, since that time, has not approached the Employer for a renewal of its contract, and, although served with notice of hearing herein, did not appear or request intervention.

The Petitioner contends that the Employer's maintenance personnel are, in fact, millwrights, and entitled to separate representation. The Employer and the Intervenor assert that the maintenance employees are not skilled craftsmen or otherwise entitled to separate representation but are appropriately a part of the citywide multiemployer unit.

The Board has previously held that maintenance employees--who normally comprise a multicraft grouping--may be separately represented in the absence of a history of bargaining on a broader basis.² It is quite clear, however, that the unit proposed by the Petitioner does not satisfy these requirements or those of a so-called residual unit. The record shows not only that the Employer's maintenance personnel are not skilled employees of craft status but also that maintenance employees performing similar tasks are uniformly included with production employees throughout the rest of the multiemployer unit of which the Employer is a part. Further, there is no question but that the Employer's maintenance employees, despite their ostensible representation by the Operating Engineers, have also been subject to the same terms and conditions of employment as negotiated by the Intervenor for maintenance employees throughout the multiemployer unit. We do not consider, therefore, that the facts as set forth herein constitute either a history of separate representation or of a residual unrepresented status. Nor do those decisions cited by our

²See *Halliburton Portland Cement Company*, 91 NLRB 717; *Borden's Soy Processing Company*, 88 NLRB 1208, *Armstrong Cork Company*, 80 NLRB 1328; and cases cited there-

dissenting colleague, each occurring in a materially different factual setting, indicate a contrary precedent. We find, therefore, that the Employer's maintenance personnel do not constitute an appropriate unit either on a departmental or residual basis.

On the entire record, the Board finds that the Employer's maintenance employees may appropriately be included within the multiemployer, citywide unit of production and maintenance employees now represented by the Intervenor. While the Employer and the Intervenor request that the Board order inclusion of such employees without recourse to an election, the Board has previously ruled that such employees are entitled to an election on the question of whether or not they desire to be placed in the broader unit.³ We perceive no valid reason for deviation from this rule in the instant case. However, as the unit sought by the Petitioner is inappropriate for purposes of collective bargaining and as the Intervenor has neither requested an election in the maintenance group nor made the required showing of interest therein, we shall dismiss the instant petition.

[The Board dismissed the petition.]

Member Peterson dissenting:

I cannot agree with the action of my colleagues in dismissing the petition in this case. For approximately 11 years the maintenance employees sought by the Petitioner were represented in a separate unit. For about the last 3 years they have not been represented by any labor organization. Yet, despite this history, the majority finds that they are appropriately a part of the multiemployer, citywide production and maintenance unit represented these 14 years by the Intervenor, which until this proceeding never evidenced any desire to be their bargaining agent. I believe that, to say the least, this achieves an anomalous result. For although the Intervenor has not requested an election among the maintenance employees or made the necessary showing of interest to support such an election and may never do so, these employees are effectively deprived of, and thoroughly insulated from, an opportunity for representation by any other labor organization. Thus, the effect of the majority decision is that, notwithstanding its past disinterest in the maintenance employees, all the Intervenor's potential competitors for these employees are eliminated from the field and the employees in effect become the private preserve of the Intervenor. Indeed, even if the Intervenor should

³See Great Lakes Pipe Line Company, 92 NLRB 583 and cases cited therein. Cf. Anheuser-Busch, Inc., 102 NLRB 800

lose an election for them, no other union can represent them separately. If they desire representation, it must be by the Intervenor, provided the Intervenor is similarly disposed. If they do not wish the Intervenor to be their bargaining agent or it is unwilling to represent them, their only recourse is to be unrepresented.

In my opinion, the result reached by the majority is not only inadvisable for the reasons heretofore stated, but also clearly contrary to Board precedents. It is well established by Board decisions that, in the absence of bargaining history on a broader basis, a maintenance unit is appropriate⁴ and the presence of craftsmen in the group is not a sine qua non.⁵ As there has been no bargaining history for the maintenance employees sought by the Petitioner on any basis for the past 3 years, in accordance with these decisions they should constitute an appropriate departmental unit. Moreover, in light of the fact that the only bargaining history for this group is one of separate representation for 11 years rather than on a broader basis, it would seem that, a fortiori, they are an appropriate unit. Indeed, if this mode of representation had continued through the last 3 years, there would be no question as to the propriety of the unit.⁶ Furthermore, assuming arguendo that my colleagues are correct in their conclusion that the maintenance employees involved herein do not comprise an appropriate departmental unit, there is still another reason for permitting them to be separately represented, if they so desire. Where, as here, an unrepresented group is the only such group, there are many Board decisions holding that the employees involved constitute a separate unit which is appropriate because of its residual nature, quite apart from its appropriateness on other grounds.⁷

In view of the foregoing, I would find the maintenance employees sought by the Petitioner an appropriate departmental or residual unit and would direct an election giving them the opportunity to indicate their desires with respect to representation by the Petitioner.

Member Beeson took no part in the consideration of the above Decision and Order.

⁴See National Carbon Company, 107 NLRB 1486; Mrs. Tucker's Products Division of Anderson, Clayton and Company, Inc., 106 NLRB 1243; General Dyestuff Corp., 100 NLRB 1311; Western Kentucky Gas Co., 97 NLRB 917; Armstrong Cork Co., 80 NLRB 1328

⁵J. C. Penney Company, 92 NLRB 1286.

⁶Iowa Public Service Co., 102 NLRB 701; Anheuser-Busch, Inc., 102 NLRB 803; Illinois Cities Water Company, 87 NLRB 109.

⁷See for example, California Cornice Steel and Supply Corp., 104 NLRB 787; Marion Manufacturing Company et al., 101 NLRB 256; Central Mercedita, Inc., 100 NLRB 1505; Houston Lighting & Power Co., 100 NLRB 76; Jacobs Mfg. Co., 99 NLRB 482.