

3. All Respondent's Vander plant production, maintenance, and yard employees and truckdrivers, excluding clerical employees, watchmen, guards, and supervisors as defined in the Act constitute, and during times material herein constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. On December 19, 1952, the above-named Union was, and at all times since has been, the exclusive representative of all the employees in the aforesaid appropriate units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate units on February 6, 1953, and thereafter, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

8. Respondent did not commit the unfair labor practices alleged in the complaint, as amended, except those specifically found to be unfair labor practices in section III of this Intermediate Report and Recommended Order.

[Recommendations omitted from publication.]

McDONNELL AIRCRAFT CORPORATION *and* DISTRICT No. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. *Case No. 14-CA-1098.*
August 20, 1954

Decision and Order

Upon charges duly filed by the District No. 9, International Association of Machinists, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel and the Board, respectively, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued his complaint against McDonnell Aircraft Corporation, St. Louis County, Missouri, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. Supp. V, Secs. 141 *et seq.*, hereinafter referred to as the Act. Copies of the complaint, the charge, and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent unilaterally modified job descriptions, eliminated jobs from the unit, and refused to bargain with the Union, as the exclusive bargaining representative of employees within the described appropriate unit, regarding such modification. The Respondent filed its answer admitting that the Union was the exclusive representative of employees within the unit, but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at St. Louis, Missouri, on December 14 and 15, 1953, before Trial Examiner Lloyd Buchanan, 109 NLRB No. 144.

duly designated by the Chief Trial Examiner. The Respondent, the Union, and the General Counsel were represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine, and cross-examine witnesses, and to introduce evidence pertinent to the issues. Various rulings were made by the Trial Examiner during the admission of evidence. The Board has reviewed the ruling of the Trial Examiner and finds no prejudicial error. The rulings are hereby affirmed.

On March 9, 1954, the Trial Examiner issued his Intermediate Report, copies of which were served upon the parties, finding that the Respondent had refused to bargain by taking the unilateral action alleged in the complaint, but for certain stated reasons he found no remedial order was necessary and therefore recommended dismissal of the complaint. The Respondent and the General Counsel filed exceptions, with supporting briefs, to the Intermediate Report. In view of the merit found in the Respondent's exceptions, we make our own findings, conclusions, and order, as follows:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

The Respondent, a Maryland corporation with principal office and place of business at Lambert Field, St. Louis County, Missouri, is engaged in the manufacture, sale, and distribution of aircraft for the Armed Forces of the United States and other agencies. It has purchased, handled, and transported to said place of business from States other than the State of Missouri, aircraft supplies, parts, and accessories valued at more than \$1,000,000; and during a period ending September 30, 1953, it manufactured, transported, sold, and shipped from said place of business to States other than the State of Missouri, aircraft valued at more than \$1,000,000. We find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District No. 9, International Association of Machinists, AFL, is a labor organization, within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICE

a. *Facts*

Since 1941, the Union has been the collective-bargaining representative of the Respondent's production and maintenance employees excluding office clericals and factory clerical employees who act exclu-

sively as such. The most recent contract between the parties became effective in November 1950 and is scheduled to remain in force until March 1955. From time to time modifications in wages and other working conditions have been mutually agreed upon and appended to the contract. The contract includes job specifications, a grievance procedure, and a clause retaining for management, subject to the provisions of the contract, the right to "manage the plant and direct the working forces, including the right to hire, suspend, discharge, promote, demote or transfer its employees for cause."

The present controversy concerns the relationship between crib attendants working in one of the Respondent's 17 tool cribs and factory clerical employees. The tool crib in which the action hereinafter related took place is designated as the template crib in department 144. This tool crib is located in the basement of the Respondent's main building immediately adjacent to a second large tool crib designated as the central tool crib. A third large tool crib is located on another floor of the plant while the remaining small tool cribs are scattered throughout the plant. A total complement of approximately 130 tool crib attendants are employed at the plant. Of these between 36 and 46 tool crib attendants have worked in the template tool crib.

Tool crib attendants, as the job specifications disclose, are primarily engaged in storing and distributing tools and equipment. As part of the distribution process, certain of the tool crib attendants are also responsible for the performance of simple clerical duties. Thus tool crib attendants help prepare tool request forms, indicate the time and date of the issuance of tools, record the department to which tools are being sent, and perform other similar duties. The performance of this type of clerical work is standard throughout the plant, but the incidence of tool crib attendants performing this work varies with the particular tool crib, and between tool crib attendants.¹

In addition to this type of clerical work, there is the clerical function in the tool cribs of maintaining the perpetual tool inventory system which is used in the plant. After tools are issued, or returned, certain notations are made on filing cards and placed in the tool crib files. From this information the Respondent can ascertain the supply of tools on hand and the number and type of tools needed to be purchased.

Between 1941 and 1947, the three major tool cribs contained both tool crib attendants and factory clericals, who were not represented by the Union. The latter classification worked almost exclusively on the perpetual inventory system and other related clerical work. In 1947, because of a general reduction in the work force due to economic condi-

¹ It appears that tool crib attendants perform a variety of jobs in the tool cribs. Those attendants who are stationed at the tool crib windows to issue or receive tools will perform a greater proportion of simple clerical duties than other tool crib attendants who primarily handle, store, or assort tools.

tions, the Respondent unilaterally removed factory clericals from the template crib in department 144 and assigned all their clerical duties to tool crib attendants. In the other two major tool cribs the factory clericals were retained. Although the removal of the factory clericals from the template crib was unilateral action by the Respondent no complaint was registered by the Union.

Between 1947 and March 1953, all clerical work in the template tool crib continued to be performed by tool crib attendants. While the number of tool crib attendants in the template crib who performed clerical work exclusively varied, about 5 attendants out of a complement of 46 were regularly assigned to perform clerical work.²

Between March and July 1953, the Respondent gradually began to reassign factory clericals, who are excluded from the unit, to the template crib because of an increase in work. As a result, 3 of the 5 tool crib attendants, who had previously done clerical work exclusively, were reassigned to general tool crib duties.³ There are currently 8 factory clericals (girls) and about 35 tool crib attendants working in the template tool crib. As noted above, in the remaining tool cribs, the clerical work in question has always been performed by factory clericals.

On or about July 30, 1953, the Union filed a grievance complaining about the assignment of factory clericals to the template tool crib. The written grievance stated that "nonunion girls [record clerks] are working in the template tool crib doing a tool crib attendant's job." The relief sought was "either reclassify the girls as tool crib attendants or get them out of the crib. Job 'spec' says, 'Keeping records in the crib'—is a tool crib attendant's work."

The grievance procedure under the contract was followed through the third step which called for a meeting between the union and company representatives. In a letter dated September 22, 1953, the Respondent advised the Union that there was no basis for the grievance because contrary to the Union's assertion maintenance of the perpetual inventory records are historically the work of factory clericals. In several discussions which followed the third step grievance meeting, the respective positions of the parties were reasserted. The Union refused to go to the fourth step in the grievance procedure, which is arbitration, but instead filed the instant charge.⁴

² At least one of the attendants was assigned to clerical duties because of an arm injury suffered shortly after his employment. Notwithstanding the parties agreement that full-time clericals would be excluded from the unit, neither this employee, nor the other four employees who performed clerical work exclusively were removed from the unit.

³ The two tool crib attendants who continue to perform clerical work exclusively worked on the last shift where female clericals are not employed.

⁴ Article IX, paragraph numbered 6 of the contract provides in relevant part, "If the grievance has not been settled in step three, arbitration shall be taken." The Respondent contends that under the contract arbitration was mandatory.

b. Conclusions

We have here presented for consideration the very narrow issue of whether the Respondent violated its obligation to bargain with the Union, by unilaterally assigning the clerical work performed by some toolroom attendants to other employees not included in the appropriate contractual unit. In the usual case where the Board has found unilateral action to be violative of an employer's obligation to bargain collectively, it has been in situations where an employer has changed general conditions of employment during active contract negotiations or while a majority union was seeking to obtain bargaining rights under the Act. The vice in such unilateral action is that it undermines the authority of the bargaining representative and indicates a lack of good faith in entering into or pursuing bargaining negotiations.

The unilateral action here must be appraised in an entirely different context, for at all times here material the parties have had in effect a collective-bargaining agreement. The agreement embodies the general conditions of employment applicable to employees which the parties are not free to ignore, but does not purport to cover every facet of the employment relationship of individual employees. Thus, the agreement contains a job specification for toolroom attendants which lists all the possible duties attendant to that job classification, including the receipt, storage, and issuance of tools and keeping records of issuance, but no attempt was made to particularize the specific duties of any attendant. Indeed, as indicated above, the amount of clerical work performed by tool crib attendants in fact varies with the particular tool crib and between the attendants therein. Presumably, such allocation of clerical work was made by the Respondent pursuant to the power it retained in the contract's management clause.

In these circumstances, we do not view the action of the Respondent in reallocating the clerical work of some of the tool crib attendants in department 144 by assigning it to factory clericals as a subversion or disparagement of the collective-bargaining process. Rather, we regard it as action which gave rise to a dispute over the interpretation and administration of the agreement which should be and was resolved through the collective-bargaining process.⁵ Indeed, it is apparent that the Union, which instituted this proceeding, originally recognized this dispute to be one of contract interpretation when it appropriately invoked the contractual grievance procedure. Even at the hearing, the Union sought to establish that under the job specifications tool crib attendants were entitled to do all the clerical work in question; while the Respondent argued that under the management

⁵ See *Consolidated Aircraft Corporation*, 47 NLRB 694, 706

clause it was privileged to assign the work to clericals. Under Section 8 (a) (5) of the Act, the Board is not concerned with the inherent merits of any labor dispute; its sole function is to establish the basic ground rules for collective bargaining and to see that all disputes affecting wages, hours, and conditions of employment between employers and the statutory representative of their employees are fully subjected to the collective-bargaining process.

We accordingly hold that the Respondent satisfied its obligation to bargain under the Act by treating the Union's complaint about the reassignment of the clerical work in question as a grievance under the applicable contract clause, by processing the matter through the first three steps of the established grievance machinery and by evincing a willingness to permit the matter to go to the final (arbitration) step of the grievance procedure. We shall therefore dismiss the complaint in its entirety.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of the Act.

2. District No. 9, International Association of Machinists, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. The following constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All of the Company's employees in St. Louis and St. Louis county, Missouri, excluding watchmen, firemen, guards, porters, and cafeteria employees; clerical employees (both office and factory) who act exclusively as such; administrative employees; professional and technical employees; supervisory employees above the rank of working foremen; powerhouse firemen; powerhouse oilers; powerhouse mechanics; maintenance electricians and lampwashers; outside truck-drivers; and trainees hired for technical, engineering, and administrative positions who may work as production and maintenance workers during their training period.

4. District No. 9, International Association of Machinists, AFL, was on April 20, 1953, and at all times since has been the exclusive representative within the meaning of Section 9 (a) of the Act, of all employees in the aforesaid unit for the purposes of collective bargaining.

5. The Respondent has not engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

[The Board dismissed the complaint.]

MEMBER PETERSON took no part in the consideration of the above Decision and Order.