

periodically since Basic assumed responsibility for the fire protection. The commissioner indicated that it is quite possible that within a year Henderson may incorporate and in such event, after the township has elected its own governing bodies, the fire department will then become the city government responsibility, thereby eliminating both the county commissioners and Basic from the picture. Because, however, this contingency is uncertain, the commissioners and Basic have continued to discuss the possibility of a contract under which the county commissioners may operate the fire department until Henderson, is incorporated. With this in mind, 2 weeks before, and on the Thursday preceeding the hearing in this proceeding, and again on the night before the hearing, the commissioners met with Moore, representing both Basic and Galbreath, to discuss the question of contracting for the operation of the fire department. Notwithstanding these negotiations, no formal agreement was worked out and another meeting was scheduled for the Thursday following the date of the hearing.

As such or similar meetings and discussions have continued for some 3 years without a resulting contract, we do not find that the current discussions for that purpose indicate the probability of a change in control that would warrant deferring an election in this proceeding.

[Text of Direction of Election omitted from publication.]

OLIVER IRON AND STEEL CORPORATION, BERRY DIVISION
and INTERNATIONAL ASSOCIATION OF MACHINISTS,
LODGE NO. 952, AFL, Petitioner. Case No. 32-RC-607.
May 18, 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 Caso March, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Petitioner's request for oral argument is denied because in our opinion the record and briefs adequately present the issues and position of the parties.

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 [Members Houston, Murdock, and Styles].

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 of all laboratory technicians A and B of the Employer in Corinth, Mississippi. Lodge No. 1189, also of the International Association of Machinists, was certified in 1952 for a unit of all production and maintenance employees including inspectors but excluding, inter alia, technical employees.¹ In the alternative, the Petitioner, which indicates that it intends to request the Board to amend that certification by substituting its name therein, desires clarification of the production and maintenance unit description to include the technicians. The Employer moves the dismissal of the petition on the grounds that (1) the issue herein was decided in 1952 when the Board excluded technical employees from the production and maintenance units; (2) the technicians are managerial and confidential employees who should not be included in any bargaining unit; and (3) the technicians, unit requested by the Petitioner is inappropriate because it includes the A technicians who are supervisors within the meaning of the Act. For reasons given below, we deny the Employer's motion.

The Employer, a manufacturer of pumps and motors, employs 4 A technicians and 4 B technicians in its separately located research and development laboratory, where the Employer's engineers plan and conduct experiments leading to improvements in their machines. The technicians, who have no prior technical education or experience, are trained to perform certain operations including connecting the experimental models designed by the engineers to testing apparatus, running various tests, recording data, and disconnecting the models when the tests are completed. There is no interchange between the laboratory technicians and the production and maintenance employees. Unlike the latter group who are, with the exception of the inspectors, paid on an hourly basis, the technicians receive monthly salaries and enjoy the same pension and sick leave benefits as those accorded the Employer's director of research and development, Frank Berry, and other "management personnel."

The laboratory, which operates on a 24-hour basis, with the technicians rotating on the various shifts, is under the overall supervision of the research director and the immediate supervision of George O'Neill, acting chief test engineer, and his principal assistant, John M. Jordon. During the day shift both O'Neill and Jordon are present to direct the activities of the 4 or 5 technicians who are then on duty. Although neither O'Neill nor Jordon is at the laboratory during the other shifts, which usually have 1 A and 1 B technician on duty, O'Neill leaves written or oral directions regarding the work to be done. These technicians also have a standing order to call O'Neill at his home if any serious difficulties occur. In addition, the technicians on all shifts receive instructions from other engineers of the Employer when they come in the laboratory to observe or check special pumps.

Despite the Employer's contention that the A technicians exercise supervisory powers over the B technicians in the absence of O'Neill and Jordon, the record is clear that the technicians do not responsibly direct the work of the B technicians. The A technicians help train newly hired B technicians, but it is customary for combinations of these employees to work thereafter as a team. O'Neill, rather than the A technicians, is responsible for making out efficiency ratings for the B technicians. Finally, the record contains no convincing evidence that the A technicians have the authority to effectively recommend the promotion, transfer, or discharge of B technicians. Although the research director indicated that he was "told" by O'Neill and Jordon that a B technician was discharged as the result of the recommendation of an A technician, this testimony is at most of a hearsay nature. Moreover, O'Neill and Jordon have first-hand knowledge of the work of each technician and are therefore in a position to make independent judgments before effecting a discharge.

On the basis of the foregoing, we find that the A technicians are not supervisors as contended by the Employer. Although there is no admitted supervisor present during the night shifts, the work performed is of a relatively routine nature and control is exercised by the chief engineer of the laboratory through his regular instructions and telephonic advice.² We find also that the technicians are not confidential or managerial employees as the secret information to which they have access is not concerned with the Employer's labor relations or the formulation of personnel policy.³

In view of the special nature of the technicians' work, the physical separation of the laboratory from the plant, the separate supervision, and the absence of interchange between the technicians and the Employer's other employees, we believe that the technicians constitute a separate appropriate bargaining unit.⁴ Under the circumstances, we find it unnecessary to pass upon the Petitioner's alternative request for a clarification of the existing production and maintenance unit. Accordingly, we find that all of the laboratory technicians A and B of the Employer in Corinth, Mississippi, excluding all office clerical employees, plant clerical employees, professional employees, guards and watchmen, all other employees, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

²Potash Company of America, 97 NLRB 511.

³Swift & Company, 98 NLRB 746; Pittsburgh Metallurgical Company, Inc., 95 NLRB 1.

⁴Pittsburgh Metallurgical Company, Inc., supra; International Harvester Company, 82 NLRB 185.