

position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she would normally have earned as wages from the date of her discharge to the date of a proper offer of reinstatement, less her net earnings during said period,²⁷ such sum to be computed according to the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, 291-294. Respondent should also be required to make available to the Board or its agents such reports and records as the Board requires in accordance with the foregoing decision.

In view of the nature, extent, and variety of the unfair labor practices committed by Respondent, including the discriminatory discharge of an employee, the commission by Respondent of similar and other unfair labor practices in the future may reasonably be anticipated. The remedy should be coextensive with the threat. I shall therefore recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed to employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is engaged in and has been engaged in commerce within the meaning of Section 2 (6) of the Act.
2. The above-named Union is a labor organization within the meaning of Section 2 (5) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Marie Smith Barron, thereby discouraging membership in the above labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
4. By such discrimination, and by interrogation, threats of reprisal, promises of benefits, and other conduct found above, thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
6. Respondent has not violated the Act by its discharge of Kermit P. Hurst, Fannie Louise Hurst, and Ceab Smith, nor by acts or conduct of Robert Carl Rogers, Dorris Anderson, or Guy Hamrick, nor by threats of discharge or other reprisal uttered by the John Sanders. It has not violated Section 8 (a) (3) of the Act in connection with the voluntary termination of employment by Opal Hollingworth and Kathleen Streeter.

[Recommendations omitted from publication.]

²⁷ *Crossett Lumber Company*, 8 NLRB 440.

Le Roi Division, Westinghouse Airbrake Co. and Sam C. Corso, et al., Petitioners and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO.
Case No. 13-RD-238. July 25, 1955

DECISION AND DIRECTION OF ELECTION

Upon a petition for decertification duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Cohen, 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 the case, the Board finds:

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

2. The Petitioners, employees of the Employer, assert that the Union is no longer the representative, as defined in Section 9 (a) of the Act, of the employees designated in the petition.

The Union, a labor organization, is the certified bargaining representative of employees of the Employer and 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.¹

4. The Petitioners seek a decertification election in a unit of "all methods engineers." They contend that this unit consists of time-study engineers and process and methods engineers. The Union contends that the unit also includes project engineers, process engineers, and the draftsman-detailer. The Employer agrees with the Petitioners.

Since 1936, the Union has represented the Employer's production and maintenance employees. Following a Board-directed election in Case No. 13-RC-2821,² the Union was certified on December 5, 1952, as the collective-bargaining representative of the Employer's methods engineers. Subsequent to the certification, the Employer's Methods Department became known as the Industrial Engineering Department, and the department was enlarged to include additional employees in new classifications. Because of this change, the Employer and the Union could not reach an agreement as to which classifications of employees should be included or excluded from the certified unit. As a result, no contract was ever executed.

There are presently 11 employees in the Industrial Engineering Department: 4 time-study engineers, a process and methods engineer, 4 project engineers, a process engineer, and a draftsman-detailer. Time-study engineers make time studies on the Employer's operations to establish a basis for fixing pay rates. The process and methods engineer prepares route sheets that specify the sequence of operations, and the tools to be used as parts move through the manufacturing process. Project engineers handle special assignments involving all phases of industrial engineering; they also rearrange equipment in the plant, and work on programs involving the reduction of manufacturing costs. At times they work with the time-study engineers

¹ The Union, in its brief, contends that the petition herein should be dismissed because (1) it was filed within 6 months of the dismissal of a decertification petition in the same unit here involved, and (2) there is pending before the Board unfair labor practice charges filed by the Union. We find these contentions to be without merit. As to (1), the earlier decertification petition was found to be improperly filed and was dismissed "without prejudice." Under such circumstances there is no waiting period required for the filing of a new petition. As to (2), the Board's records show that the Regional Director refused to issue complaints upon the Union's charges and that the General Counsel thereafter on appeal sustained his action.

² Not reported in printed volumes of Board Decisions and Orders. (At that time, the Employer, Le Roi Division, was an independent company, the Le Roi Company.)

in establishing standards to be used in making time studies. The process engineer establishes standard procedures for the Employer's operations and processes, and prepares route sheets for components and assemblies on new or complex parts. He occasionally works with time-study engineers. The draftsman-detailer draws equipment layouts, and collects engineering data. All the employees in question are salaried. They do not interchange with other employees, and all are under the immediate supervision of the superintendent of production. The parties are in agreement that these employees are not professional employees. It is clear from the nature of their duties that they are technical employees, and we so find.

In finding a unit of methods engineers in Case No. 13-RC-2821 to be appropriate, the Board stated in part:

. . . In a previous case involving these employees, *Le Roi Company*, 98 NLRB No. 24, the Board found that the methods engineers were not confidential employees. The Board hereby reaffirms that finding as well as the companion conclusion that the methods engineers are in a technical category. While in *Le Roi Company, supra*, we held that the methods engineers could not constitute a separate unit *because of the exclusion of other technical employees*, the instant record shows that the only remaining unrepresented employees doing work of a technical nature are the field engineer, coordinating engineer, consulting engineer on air compressors and the junior field engineer. The record also shows that these latter employees' . . . duties, interests, and conditions of employment are greatly divergent from those of the methods engineers, and are managerial in character. Accordingly we shall exclude them from the unit, and *as the methods engineers comprise a residual group of unrepresented technical employees*, the reasons cited previously for denying them a separate unit are no longer valid. [Emphasis supplied.]

As the Employer's production and maintenance employees have been separately represented since 1936, it is thus apparent that the unit found appropriate in Case No. 13-RC-2821, *supra*, was a residual unit of unrepresented technical employees. It follows therefrom that the Union's position is correct, and that the certified unit includes all the technical employees here in question. Such unit, moreover, is an appropriate unit of technical employees.³

Upon all the facts, we find that all time-study engineers, process and methods engineers, project engineers, process engineers, and draftsmen-detailers, at the Employer's West Allis, Wisconsin, internal combustion engine and air compressor plant, excluding all supervisors

³ See *E I Dupont de Nemours and Company, Inc.*, 107 NLRB 734, at 740, *Ladish Co.*, 100 NLRB 159, at 163, *The Monarch Machine Tool Co.*, 98 NLRB 1243, at 1245.

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 Election⁴ omitted from publication.]

CHAIRMAN FARMER took no part in the consideration of the above Decision and Direction of Election.

⁴The Petitioner submitted an adequate showing of interest among the employees in the unit it sought to decertify. However, in view of our finding that the unit should encompass all technical employees, we hereby instruct the Regional Director not to proceed with the election herein directed until he shall have first determined that the Petitioner has made a sufficient showing of interest among the employees in the unit found appropriate herein

Comus Manufacturing Co., Inc. and Amalgamated Clothing Workers of America, CIO, Petitioner. Case No. 1-RC-4024.
July 25, 1955

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on May 11, 1955, under the direction and supervision of the Regional Director for the First Region among the employees in the stipulated unit. Upon completion of the election, all parties were furnished a tally of ballots. The tally showed that of approximately 137 eligible voters, 129 cast valid ballots, of which 42 were for and 87 were against the Petitioner. The tally also showed that there were three challenged ballots.

On May 16, 1955, the Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and on June 15, 1955, duly issued and served upon the parties his report on objections, in which he recommended that the election held on May 11, 1955, be set aside. On June 25, the Employer filed timely exceptions to the Regional Director's report on objections.

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. As stipulated by the parties the following employees of the Employer constitute a unit appropriate for the purposes of collec-