

**MEMBER JENKINS, dissenting in part:**

Although I concur in the result reached by my colleagues, I would dismiss the petition on the ground that the unit sought is inappropriate.<sup>39</sup> For the reasons stated in my dissent in *West Virginia Pulp and Paper Company*, 118 NLRB 1595, I would refuse to find as a bar the contract of District 50, United Mine Workers of America, which is not in compliance with the filing requirements of the Act.

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<sup>39</sup> On the basis of the facts stated in the majority opinion, it is clear that an appropriate unit of truckdrivers in this plant would consist of both over-the-road and local drivers, in view of their frequent interchange and their common functions, supervision, employee benefits, seniority, and method of payment. *General Electric Company, Aircraft Gas Turbine Division*, 116 NLRB 1396.

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**General Electric Company, Petitioner and American Federation of Technical Engineers, AFL-CIO, Local 142. Case No. 5-RM-136. January 2, 1958**

**SECOND SUPPLEMENTAL DECISION AND ORDER**

On July 19, 1950, after an election conducted pursuant to a Decision and Direction of Election,<sup>1</sup> the Board issued a Supplemental Decision, Certification of Representatives and Order in the above-entitled proceeding, in which International Federation of Technical Engineers, Architects and Draftsmen's Union, AFL, the predecessor to the Union named in the caption above,<sup>2</sup> was certified as the collective-bargaining representative of the following employees:

All draftsmen, draftsmen apprentices, designers, detailers, tracers, and trainees at the West Lynn apparatus department plants of General Electric Company, 40 Federal Street, West Lynn, Massachusetts, excluding all other employees, guards, and supervisors as defined in Section 2 (11) of the Act, as amended.

On February 26, 1957, the Union requested the Board to clarify its certification by finding that the classification of engineering designers was included within the certified unit. On March 22, 1957, the Board notified the parties to show cause why the request should not be granted, and on April 11, 1957, the Employer filed a "Response" thereto, contending that the Union's request for clarification should be dismissed. On May 7, 1957, the Board remanded the matter to the Regional Director for the First Region for the purpose of receiving evidence on the issues involved, and pursuant thereto, a hearing was held on June 10 and 12, 1957, before Robert S. Fuchs,

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<sup>1</sup> 89 NLRB 726, 734 (voting group 17).

<sup>2</sup> On July 22, 1953, the Board amended the Certification of Representatives to show Local 142, American Federation of Technical Engineers, as the certified bargaining representative.

hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

Upon the entire record in the case, the Board finds:<sup>4</sup>

There are approximately 95 employees presently in the certified bargaining unit, classified as designers 1, 2, and 3; detailers 1, 2, and 3; draftsmen, apprentices, trainees, and tracers, all of whom do sketching and drafting work of varying degrees of complexity and responsibility. The classification of engineering designer was established in 1946 with the transfer of two designers 1. It now includes 2 additional individuals who were transferred from the designer 1 classification in August 1956. Engineering designers are part of the Employer's administrative organization of drafting personnel, and are supervised by the same individuals responsible for the employees in the certified unit. The projects to which the engineering designers, as well as designers 1, 2, and 3 are assigned originate in various advance engineering units of the West Lynn plant. Ideas for new products and services are proposed by engineers who are admittedly professional employees. By verbal instruction or through rough sketches the engineers pass them on to the designers for development and drafting.

Between 1934 and 1946 all employees engaged in designing and drafting, except professional employees, were included within the production and maintenance unit which was then represented by United Electrical, Radio and Machine Workers of America, referred to herein as UE. In 1946, just prior to a strike called by UE, the Employer established the engineering designer classification and thereafter, so long as UE remained the representative for the production and maintenance unit, this classification was not included in the drafting supplement to the bargaining contract.

In 1950, the predecessor of the American Federation of Technical Engineers was granted a severance election for the unit of draftsmen described above. No reference to the existence of any designers not included in the production and maintenance unit was made at the 1950 hearing, nor did the Board elucidate, in its Decision and Direction of Election, whether the term "designer" was to be limited to the

<sup>3</sup> The hearing officer refused to admit into evidence a document prepared by a company official summarizing the results of a meeting held shortly before the 1950 election between company and union officials and a Board representative regarding eligibility lists of voters which had been prepared by the Company. Lists of those employees considered by the Employer to be eligible and noneligible to vote in the severance election for the draftsman's unit were introduced into evidence at this hearing, and one of the officials who helped prepare these lists testified that they had been available for inspection by all the participating unions. As the evidence thus introduced at the hearing confirmed the Employer's contention that the Union involved herein could have checked the eligibility lists had it so desired, we find that the proposed exhibit was cumulative and was properly rejected by the hearing officer.

<sup>4</sup> 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 Leedom and Members Bean and Jenkins].

designer classifications then within the production and maintenance unit. The names of the engineering designers appeared on a list of employees prepared by the Employer as not eligible to vote. This list was made available to the Union. Between 1950 and 1954 there appears to have been some informal discussions between the Union and the Employer on the status of the engineering designers, but none of the contracts entered into during that period referred to them. In all such contracts, however, specific rates were established for designers 1, 2, and 3.

In 1954, the Union filed a grievance with the Employer protesting the assignment to the engineering designers of work which the Union alleged had previously been done by employees within its bargaining unit. Although the record does not show how the grievance was finally settled it is clear that no change in the status of the engineering designers was made. In negotiating new contracts in 1954 and 1955, the Union contended that the engineering designers should be included within its unit, but eventually withdrew its request upon the Employer's insistence that they were not properly part of the unit.

The Union concedes that the engineering designers are more skilled than the most skilled classification within the unit, that of designer 1, and are therefore generally assigned to the most difficult development and designing problems. However, the range of skills of these 2 classifications are sufficiently broad and overlapping so that when the workload requires, a project which would normally be assigned to 1 classification can readily be assigned to the other. There is no difference in the educational qualifications for engineering designers and other designers, although 3 of the 4 present engineering designers are qualified as registered engineers under Massachusetts law.

The Employer contends that the engineering designers are professional employees as defined in Section 2 (12) of the Act because their work is primarily creative. In view of the disposition below, we do not find it necessary to decide this question.

There have been no significant changes in the duties, responsibilities, or working conditions of engineering designers since the classification was established 11 years ago. During that period, furthermore, there was a Board-conducted election in which the status of engineering designers could have been finally determined. Whether the term "designers" used in the certification was meant to include "engineering designers" must be decided not as an abstract problem of definition, but in the context of what the Board and parties understood was to be included therein at the time of the 1950 hearing. We note that there was no dispute at that time as to the job classifications to be included in a drafting and designing unit, but only as to whether such a unit was severable from a production and maintenance unit. There seems to have been implicit agreement on the part of all the unions involved

in the original hearing that a designing and drafting unit, if severable at all, would consist only of those classifications covered by the existing contract between UE and the Employer. As the engineering designers were then excluded from the coverage of the contract in force during 1950, and as the Employer did not in any way conceal the existence of that job classification, we believe that the Union's failure to raise any issue as to the status of engineering designers was no oversight but was rather a deliberate choice on its part to continue the existing arrangement under which engineering designers were excluded from the unit. That such was the Union's understanding at the date of the 1950 election is further indicated by its subsequent failure to question the exclusion of the engineering designers from its bargaining unit until the negotiations over the 1954 contract. We regard, moreover, as significant in determining what the Union considered the scope of its certification that as late as 1954, the Union's grievance over certain work assignments to the engineering designers was not based on any contention that the engineering designers were covered by the certification, but only that the Company was transferring work which had formerly been assigned to its members to employees who were outside the unit.

We conclude that the engineering designers have been excluded from the unit which the Union and its predecessor have represented since 1950. Accordingly, a motion for clarification of the certification is not the proper method for adding the excluded classification to the existing unit. Instead, the Union should have filed a representation petition seeking an election among the engineering designers to determine whether they desire to be added to the present unit of draftsmen.<sup>5</sup> We shall therefore dismiss the Union's request for clarification of the certification.

[The Board denied the request of American Federation of Technical Engineers, AFL-CIO, Local 142, for clarification of its certification.]

<sup>5</sup> *General Motors Corporation, Chevrolet Motors Division, etc.*, 117 NLRB 750.

**Kennametal, Inc. and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, (UAW), AFL-CIO, Petitioner.** *Case No. 6-RC-1931. January 3, 1958*

#### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Board Decision and Direction of Election<sup>1</sup> an election by secret ballot was conducted on July 24, 1957, under the direction

<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.  
119 NLRB No. 148.