

members, and to the extent possible, it has adjusted grievances. On the other hand, there is no showing of any activity by the Intervenor. Although the record contains the October 15 letter indicating a purported revival of the Intervenor, and it was purportedly represented at this hearing, it does not appear to have engaged in any activity, nor did any member of it testify herein. There is no evidence on this record that the Intervenor is ready, willing, or able to administer the contract. Instead, the Employer has dealt with the dissident group, which numbers all former officers of the Intervenor and almost all the employees, but has attempted to treat this group as if it were the old organization. We do not think that this attempt to perpetuate this old organization as an entity establishes it to be a functioning labor organization. Upon the entire record, we are satisfied that no stabilizing purpose would be served by finding the contract a bar. We find that the contract between the Intervenor and the Employer does not bar an election herein and that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (b) of the Act.

4. In accordance with the stipulation of the parties, we find that the following employees of the Employer at its Wilkes-Barre, Pennsylvania, plants, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees, excluding office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

United States Gypsum Company, Petitioner and United Stone and Allied Products Workers of America, AFL-CIO, and Its Local 178.¹ *Case No. 8-RM-170 January 28, 1958*

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John Vincek, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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].

¹ The name of the Union appears as corrected at the hearing

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 appropriate unit:

The Petitioner and the Union agree that a unit of all production and maintenance employees at the Employer's Gypsum, Ohio, plant and mine, including inspectors, powerhouse employees, truckdrivers, sink float keymen, construction workers, storeroom employees, and plant clerical employees, guards, and supervisors as defined in the Act, is appropriate for purposes of collective bargaining.² There are about 588 employees in the plant and mine, of whom approximately 95 are salaried and not in dispute. All the remaining personnel are hourly paid, and the Employer-Petitioner contends that 63 of them should be excluded—17 as technical employees, and 46 as supervisors. The Union would include all the employees in these disputed categories as regular production and maintenance employees.

Laboratory employees: This category includes 17 testers who are located either in the main laboratory or in one of the departmental laboratories. They are responsible to the quality supervisor or to the supervisors of the department where they work. The only evidence bearing on the duties of the testers was introduced by the Employer, whose quality superintendent testified that applicants for jobs as testers are required to have a high school education, preferably with some science; that the difficult nature of the tests requires 6 months' training before promotion to the position of A-tester; and that testers perform a large variety of special tests using numerous testing devices. Contrary to the Union's assertion, there is no evidence in the record showing that testers perform simple routine tests which require no special training or education. In previous decisions involving this same plant,³ the Board found that these testers were technical employees. As the uncontradicted evidence in this case indicates that testers perform complicated tests of a technical nature requiring special training, we find that testers are technical employees and exclude them from the unit.

² In 1955 the Board directed an election at this plant, finding a production and maintenance unit appropriate (114 NLRB 1285). Thereafter, the instant Union was certified and entered into a contract with the Employer.

³ *United States Gypsum Company*, 57 NLRB 1240; 72 NLRB 863; 114 NLRB 1285.

Alleged Supervisors

In support of its request for exclusion of this large number of employees as supervisors, the Employer relies strongly on a 1955 decision of this Board in which all were so excluded.⁴ In this proceeding, however, the record evidence is more detailed, particularly with regard to the duties and responsibilities of the alleged supervisors and their relationship to other production and maintenance employees. Under the circumstances, we do not consider the earlier decision dispositive of the issues now raised.

Contrary to the Employer's contention, the record shows that the employees in dispute do not have power effectively to recommend changes in the status of other employees. They do not adjust grievances and are not included in the Employer's established formal grievance procedure. Their benefits and working conditions are similar to those of the other hourly employees, rather than to the salaried supervisors. The salaried supervisors also enjoy different vacation schedules and different methods of compensation for overtime work. The wages of the alleged supervisors range from \$1.89½ to a maximum of \$2.34½ per hour, whereas the salaries for the admitted supervisors start at \$475 per month.

In the absence of any of the usual indicia of supervisory status, there remains for consideration only the question, also raised by the Employer, whether these employees responsibly direct the work of other employees. The Employer contends that they do, while the Union insists that whatever direction of other workmen may appear in the duties of this group is only routine in nature and does not require use of independent judgment.

Before commenting on the detailed work of each disputed category, we note another element in the total picture of this case, which the Board has consistently deemed highly persuasive in the ultimate determination of supervisory issues. If we were to exclude the employees in the disputed categories as supervisors, the ratio of supervisors to rank and file employees would be highly disproportionate. For example, in the engineering department there are 5 salaried supervisors and 60 hourly employees. The Employer would also exclude 7 operating engineers, 1 lead trackman, and 5 lead mechanics, and there would result an unusually high ratio of 18 supervisors to 47 employees, or 1 supervisor to less than 3 employees. Similarly, there are 6 supervisors and 58 hourly employees in the board department. Here, the Employer would exclude 4 board machine operators, 2 car checkers, and the head mechanic, thus resulting in a ratio of 13 super-

⁴ *United States Gypsum Company*, 114 NLRB 1285.

visors to 51 employees, or 1 supervisor to every 4 employees. In comparable situations, the Board has found the disputed categories not to be supervisors.⁵

Machine operators: This category includes 26 employees located in various departments and classified as board machine operators, moulding machine operators, automatic finishing machine operators, A-sanders, A-slitters, cupola operators, and industrial wool machine operators. Their wages range from \$1.89½ to \$2.09½ per hour, slightly higher than for the employees with whom they work, but it is clear from the record as a whole that the difference is based on their skill and experience, rather than responsible direction of other employees. The number of employees working on each machine varies. Of the 26 machine operators, 12 have as few as 2 employees in their "crew"; and only 8 have more than 4 "crew" members. To some extent, the machine operators coordinate the operations of these lesser skilled employees, but for the most part, these workers automatically shift positions in a routine manner following established operating procedure.

On these facts and on the entire record, it is clear that the machine operators are merely conduits between the true supervisors and the crewmen. Whatever authority they exercise with respect to the employees comprising their crews is routine in nature and does not require the exercise of independent judgment. Accordingly, we find that the machine operators are not supervisors within the meaning of the statutory definition.

Operating engineers: There are seven licensed engineers in this category and the record shows that they are qualified to work without the constant supervision of the power plant supervisor to whom they are directly responsible, and from whom they receive their orders. They are assisted in their work by a crew of 1 to 4 employees who perform simple routine tasks such as handling ashes, passing coal, obtaining samples of water, and procuring supplies from the supply room. The operating engineers, like the machine operators, direct to some extent the work of their crew, but it is clear from the entire record, that the control they exercise derives from their skill, their experience, and their responsibility for the operation and control of the complex machinery involved. As they do not responsibly direct employees within the meaning of the Act, we find that the operating engineers are not supervisors.⁶

Car checkers, lead trackman, and block head loader: The two car checkers are responsible to the loading foreman whose immediate supervisors are the general foreman and the board department super-

⁵ *United States Gypsum Company*, 118 NLRB 20; 85 NLRB 162, 164. See, *Pervel Corporation*, 119 NLRB 497.

⁶ See, *Southern Bleachery and Print Works, Inc.*, 115 NLRB 787

intendent. The loading foreman receives orders, separates them according to the method of transportation to be used, and delivers them to the truckloading area or to the rail car loading area, where the checkers fill the orders and see that the trucks or rail cars are loaded according to prepared diagrams. The checkers receive the same rate of pay as truck operators with whom they work, and often are paid less than loaders who are on piece rate.

The lead trackman receives the same rate of pay as the car checkers and is responsible to the yard superintendent for keeping the tracks clean during inclement weather and whenever necessary. On occasion, he has a crew of 3 to 5 employees, but normally, and for the 6 months preceding the hearing, his crew has consisted of only 1 man.

The block head loader is responsible to the general foreman who in turn is responsible to two salaried supervisors. He works with a crew of 4 to 8 loaders and loads cars and trucks according to a loading schedule based on orders. He does the same manual work as the other loaders 60 percent of the time and in addition fills out reports and makes inventories.

Although the Employer contends that the car checkers, the lead trackman, and the block head loader responsibly direct the employees with whom they work, we find that their direction of other employees is routine in nature and follows closely upon the schedules and orders of their supervisors. Accordingly, we find that they are not supervisors.

Head mechanic, maintenance lead mechanic, mechanic keymen, and lead mechanics: This category includes 9 employees, at least 7 of whom are classified as mechanic keymen by the Employer. Although they possess a variety of titles denoting that they are all mechanics, the record discloses that some are electricians, some are welders, and others diversified craftsmen. All of them are paid \$2.34½ per hour; all of them are the highest skilled workers in their respective craft specialty; and all of them are more skilled than the employees in their crews. The average size of each crew is four men, not all of whom are mechanics, although classified as mechanics (A, B, and C) and mechanic helpers (A and B).

The head mechanic and his crew maintain equipment in the mill department and are responsible to the general foreman and the department superintendent. At the beginning of the day shift, the mechanics are assigned various repair jobs from a list prepared by the night shift foreman. Although the head mechanic does some repair work himself, most of his time is spent inspecting the equipment. Records of inspections are prepared by the head mechanic, but time-cards showing the machines repaired and serviced by the mechanics are kept by the general foreman. Only the general foreman or the superintendent can halt production to make major repairs. A witness

for the Employer testified that the relationship between the head mechanic and his crew is that of a skilled craftsman to others less skilled.

The maintenance lead mechanic and his crew work in the board department performing minor repairs, lubricating all the equipment, changing knives in the machines, and changing oil in the trucks. If the machine operators notice that a machine needs repairs, they report this to the shift foreman who records this report in a log book which the maintenance lead mechanic reads as soon as he comes on duty in the morning. This employee spends a portion of his time welding, and although there are seven admitted supervisors in the department, the record shows that he receives his "instructions" directly from the superintendent or the assistant superintendent.

There are 2 mechanic keymen, 1 on each shift, working underground in the mine. According to the Employer's mine superintendent, the mechanic keymen are expert tradesmen, do manual work 50 percent of the time, and are responsible to the shift foreman who in turn is responsible to the general foreman and the mine superintendent. On each shift there are about 14 to 17 employees working in the 2 mining areas, and on the day shift there is an additional crew of 3 to 8 employees working in the development area. All these employees are under the immediate supervision of the shift foreman, even though he spends 50 percent of his time in the main mining area. Contrary to the Employer's contention, we find no evidence showing that the mechanic keymen responsibly direct other employees while the shift foreman is visiting the other areas of the mine. In fact, the record shows that if the shift foreman is needed in any area, he can be immediately contacted by telephone.

One of the five lead mechanics, a skilled electrician, is referred to as the "electrical working foreman." He works 40 percent of the time mainly troubleshooting, and in addition prepares requisitions and timesheets. This electrician and the 6 lesser skilled electricians are immediately responsible to 2 salaried supervisors, namely, the electrical foreman and the general foreman. Another lead mechanic, who is called the "construction assistant," is a skilled welder and performs all difficult welding jobs. He spends over 50 percent of his time in the superintendent's office preparing plant maintenance record sheets and other paper work. Of the remaining 3 lead mechanics, 1 is a skilled mechanic, 1 is a skilled pipefitter, and 1 is called the "construction foreman." They perform manual work at least 40 percent of the time, and spend the remainder of their time organizing the work of 12 lesser skilled employees, none of whom are assigned to a particular lead mechanic. All of these employees are directly responsible to the general maintenance and construction foreman.

On these facts and on the entire record, we find that the relationship between these alleged supervisors and the employees with whom they

work is that of a skilled craftsman and his helpers, and whatever authority they possess as to other employees derives from their working skill and experience; it is not the type of authority contemplated in the statutory definition of a supervisor. Accordingly, we find that the head mechanic, the maintenance lead mechanic, the mechanic keymen, and the lead mechanics are not supervisors.

As the foregoing employees are not supervisors but regular production and maintenance workers, they have a clear community of interest with the remaining employees and appropriately belong in the same bargaining unit with them.⁷ However, as they have been excluded in the past from the present existing bargaining unit and from the pertinent collective-bargaining agreements, they are now entitled to a self-determination election for the purpose of deciding, as a separate group, whether they wish to be represented by the Union and added to the existing bargaining unit.⁸ Accordingly, we shall direct separate elections in the following groups of employees at the Employer's Gypsum, Ohio, plant and mine:

A. All production and maintenance employees, including inspectors, powerhouse employees, truckdrivers, sink float keymen, construction workers, storeroom employees, and all plant clerical employees, but excluding the acoustone warehouse foreman, professional employees, all office clerical employees, guards, laboratory employees and all other technical employees, and all supervisors as defined in the Act.⁹

B. All board machine operators, automatic finishing machine operators, moulding machine operators, A-sanders, A-slitters, cupola operators, industrial wool machine operators, operating engineers, car checkers, lead trackman, block head loader, head mechanic, maintenance lead mechanic, mechanic keymen, lead mechanics, construction assistant, construction foreman, and the electrical working foreman, excluding all other employees and all supervisors as defined in the Act.¹⁰

If a majority of the employees in voting group B vote against the Union, they will be taken to have indicated their desire to remain outside the presently recognized unit, and the Regional Director is instructed to issue a certification of results of election to that effect. If a majority of the employees in voting group A only, cast their ballots for the Union, they will be deemed to have indicated their desire to be represented by the Union and the Regional Director is instructed to issue a certification of representatives to the Union as to this unit,

⁷ *United States Gypsum Company*, 118 NLRB 20.

⁸ *The Zia Company*, 108 NLRB 1134, as amended 109 NLRB 312.

⁹ This group is the presently recognized unit. The parties agreed to exclude the acoustone warehouse foreman as a supervisor, and employees Leggett, Capko, and Holder as office clerical employees. The category of railroad conductor no longer exists.

¹⁰ This group consists of employees entitled to a self-determination election.

which we find to be appropriate for the purposes of collective bargaining.

On the other hand, if a majority of the employees in voting group B vote for the Union, that group will appropriately be included in the presently recognized unit and their votes shall be pooled with those in voting group A.¹¹ If a majority of employees in the pooled group select the Union, the Regional Director is instructed to issue a certification of representatives to such labor organization for such unit, which under the circumstances we find to be appropriate for the purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

¹¹ In the event the votes are pooled, they shall be accorded their face value.

Carolina Power and Light Company and Utility Workers Union of America, AFL-CIO, Petitioner. Case No. 11-RC-980. January 28, 1958

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF ELECTION

On December 12, 1957, the Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the primary unit sought by the Petitioner, namely, a unit of certain regular full-time employees in the Employer's northern division, was inappropriate, and that the appropriate unit was one which included all such employees in the Employer's central service area. Although it appeared that the Petitioner, in the alternative, would represent any unit which the Board found to be appropriate, the Board found that the Petitioner's showing of interest was not sufficient to warrant holding an election among the employees in the central service area. Accordingly, the Board dismissed the petition.

On December 20, 1957, the Petitioner filed a motion to amend decision and to direct an election. A copy of this motion was served on the Employer; the Employer did not file an answer.

It now appears that during the course of the hearing herein, the Petitioner made the alternate request to represent any unit which the Board found to be appropriate, and thereafter, submitted additional cards which it deemed sufficient to meet the 30-percent showing of interest requirement in a unit comprising the employees in the central service area.² The Board's Regional Office acknowledged receipt of

¹ 119 NLRB 742.

² At the hearing, the Employer contended that this was the only appropriate unit for collective-bargaining purposes.