

mend that Respondent be ordered to bargain with the Union, upon request, in the unit found herein to be appropriate, and embody in a signed agreement any understanding reached. Having further found that Respondent discriminated with respect to the hire and tenure of employment of Henry Silva and Manuel Martin in violation of Section 8 (a) (3) and (1) of the Act, I will recommend that Respondent make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned from August 13¹⁶ to September 16, 1957, the date of his reinstatement, less his net earnings during said period.

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. All truckdrivers and helpers at Respondent's Charlestown plant in Boston, Massachusetts, excluding office clerical employees and 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.

2. Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been at all times since April 15, 1957, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

3. By refusing at all times on and after April 22, 1957, to bargain collectively with the above-named Union as the exclusive representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

4. The strike, which commenced on April 26, 1957, and in which employees Henry Silva and Manuel Martin participated, was caused by Respondent's unfair labor practice in refusing to bargain with the Union and hence was an unfair labor practice strike.

5. By failing to reinstate Henry Silva and Manuel Martin, two striking employees, upon their unconditional request for reinstatement, thereby discriminating with respect to their hire and tenure of employment to discourage membership and activity in behalf of the aforesaid Union, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

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

[Recommendations omitted from publication.]

¹⁶ Although the unconditional request for reinstatement was made by letter dated August 9, counsel for the Union concedes in his brief that August 13 would be regarded as a reasonable time for an offer of reinstatement to have been made in response to the request.

Colgate-Palmolive Company and International Brotherhood of Electrical Workers, AFL-CIO; District 15, International Association of Machinists, AFL-CIO; The Independent Union of Carpenter-Millwrights of Colgate-Palmolive Company (unaffiliated); The Independent Union of Tinsmiths of Colgate-Palmolive Company (unaffiliated); and The Independent Union of Painters of Colgate-Palmolive Company (unaffiliated),¹ Petitioners. Cases Nos. 22-RC-72, 22-RC-76, 22-RC-83, 22-RC-84, and 22-RC-85. June 20, 1958

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before

¹ On April 24, 1958, the Petitioner requested permission to withdraw its petition for certification, and notified us that all parties had been served with a copy of the request. No objection having been received thereto, the request to withdraw the petition is granted

Arthur Eisenberg, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Rodgers, Jenkins, and Fanning].

Upon the entire record in these cases, the Board finds:³

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

2. The labor organizations involved claim 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 Colgate-Palmolive Company, a Delaware corporation, has four manufacturing plants located in the United States, at Jeffersonville, Indiana; Berkeley, California; Kansas City, Kansas; and at Jersey City, New Jersey. The Jersey City operation is the Employer's principal plant and the one involved in these proceedings. There are approximately 2,100 hourly paid employees at the Jersey City plant, represented since 1938 by the Employees' Association, Inc. of Colgate-Palmolive which was permitted to intervene and will hereafter be referred to as the Intervenor.

The four Petitioners herein each seek to represent certain alleged craft employees in the maintenance department. The Intervenor and the Employer contend that the employees sought by the Petitioners are maintenance specialists and that due to the mutuality of interest between production and maintenance employees as well as the lack of craft lines in the maintenance work and plant seniority, the units sought are inappropriate.

The Jersey City plant consists of 44 buildings covering approximately 10 city blocks. Production is scheduled for 50 weeks with 2 weeks vacation shutdown. Both the production and maintenance employees take their vacation at this time except those necessary for service and emergency needs. Production and maintenance employees have the same vacation plan, sickness and accident plan, retirement

with prejudice to its filing a new petition for a period of 6 months from the date of this Decision and Direction, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration of such period.

² The hearing officer rejected testimony and the Employer's offer of proof concerning the area bargaining pattern in the soap industry. The Board has held that the bargaining history of companies not involved in a proceeding is not material to the issue under the standards adopted by the Board in *American Potash and Chemical Company*, 107 NLRB 1418. See *Bethlehem Pacific Coast Steel Corp*, 117 NLRB 579, 580, footnote 6.

³ The request of the Employer for oral argument is denied inasmuch as the record and the briefs submitted by the parties to the case, in our opinion, adequately and fully present the issues and the positions of the parties.

income, group hospitalization and medical plans, grievance procedure, shift differential, holiday, and overtime pay.

The four groups of employees sought by the Petitioners are employed in the plant engineering department which is composed of the maintenance department, the instrument department, and the powerplant; each department is under the supervision of an engineer.

The maintenance department consists of a main shop, and several area shops located in the production areas. The primary function of these shop employees is to service and maintain production equipment and facilities to insure production line efficiency. This applies to repair and adjustment of machinery, maintenance of building, and maintenance of the powerplant. There are approximately 340 employees in the maintenance department. In addition to the various mechanics, there are approximately 43 semiskilled and unskilled employees; 9 oilers, 22 mechanics' helpers, 4 janitors, and 8 attendants in the storeroom.

The central or main shop is a reservoir of maintenance employees, classified as mechanics divided into the following groups: Electricians, electrician trainees, welders, masons, machinists, machinist trainees, oilers, tinsmiths, tinsmith trainees, painters, carpenter-millwrights, carpenter-millwright trainees, pipefitters, pipefitter trainees, janitors, insulators, and mechanics' helpers. Here is located all the major tools used by all of the mechanics. The main shop employees service directly the receiving, warehousing, and shipping departments, the powerplant and its distribution of utilities, all buildings, and the elevators. They are subject to assignment wherever their services are needed. The central or main shop is under the supervision of an area master mechanic who is assisted by several foremen. The millwrights, machinists and oilers, tinsmiths, pipefitters, electricians, and welders have a foreman of their craft. The insulators, painters, and masons, are supervised by the same foreman. Each trade or craft has tool lockers and benches in a specific area within the main shop. All first-class mechanics are paid the same, and all third class the same. All mechanic trainees receive the same rate of pay in line with their tenure. The witnesses of the Employer and the Intervenor testified to many instances of similar duties performed by more than one craft.

The Employer has located several area shops throughout the tremendous area of the plant, in the production areas, to carry out the maintenance work in order to save the time which would be wasted if it all came from the central shop. These area shops are supervised by a master mechanic or a foreman who has charge of all the various mechanics assigned to the shop. He does not handle any tools, except in an emergency, and the several master mechanics and foremen come

from different mechanical backgrounds. These mechanics are engaged in maintenance and repair work within the particular area, and it is the responsibility of the area shop to see that production is kept in full operation. Teamwork is essential between these mechanics to perform the necessary maintenance duties.

Since 1945, the Employer has maintained a training program for maintenance employees, with the exception of the painters. These trainees are recruited from the production employees. Interested production employees make application at the employment office and are given qualifying tests relating to mechanical aptitude and comprehension, with seniority controlling, other things being equal. The International Correspondence School is the Employer's recognized standard for training mechanics. The trainees must complete the prescribed 4-year course, during which time they work in their chosen field for experience. Presently, there are 31 trainees, 30 have come from the production departments and 1 from the mechanics' helpers classification. At the time the trainee program was begun, the Intervenor and the Employer agreed to discontinue second- and third-class classification of mechanics when the employees in these classifications died, resigned, or retired.

The machinists bid every 2 years for placement into areas of their choice and other mechanics bid every year. Tinsmiths, masons, insulators, and painters exercise no bid because they work only out of the main shop. Bids are granted on the basis of seniority and each mechanic is on a 90-day probationary period after the new assignment is made. If unable to perform the new job satisfactorily, he may return to the central shop.

Since 1949, the Employer's seniority plan permits all mechanics who have transferred into plant engineering to retain their plant seniority, and in case of a reduction within the maintenance department may claim seniority in their old job or any other job for which they are qualified.

Case No. 22-RC-72

The International Brotherhood of Electrical Workers, AFL-CIO, seeks a craft unit of all electricians and electrician-trainees. The 39 electricians employed by the Company are referred to as first-class electricians. Twenty-four were hired in this classification and one as a second-class electrician. The remaining 14 were from other departments in the plant benefiting from the trainee program. The three trainees are also from the production departments. The general duties of the electricians are to repair, maintain, install power and lighting systems, replace bearings, install conduits and starters, and assemble electrical devices. They inspect and repair electrical installations and equipment.

Twenty-three electricians are assigned to the central shop with the three electrician-trainees. They report to the electrician foreman who gives out the work assignments as these electricians are subject to assignment any place in the factory where their services are required and most of the assignments are outside of the shop.

Three electricians work on the night shifts, reporting to the night maintenance foreman; 1 on each shift for general maintenance and 1 on the 4 to 12 shift to repair and inspect elevators. Night shift assignment is rotated among the electricians, each spending 2 weeks during the year. Each electrician while on the night shift is assigned a helper from the mechanics' helper classification.

In the area shops, there are 13 electricians who report to the area master mechanic or foreman who supervises all the mechanics assigned to his shop. The principal duty of the area shop electricians is to maintain the electrical equipment in the assigned area, to be there if a short circuit occurs or an automatic switch fails to operate.

Notwithstanding that in the area shops and on the night shifts, electricians are not under craft supervision, we find that the electrical maintenance work performed by the electrical mechanics is that of a journeyman electrician. Further, in view of the fact that all electricians were either hired as first-class electricians or became such as a result of study and experience over a period of not less than 4 years, we find that they constitute a true craft group such as the Board has established in separate units for the purpose of collective bargaining despite a history of bargaining on a broader basis. Moreover, the Petitioner is the traditional bargaining representative of these employees, and they may constitute a separate appropriate unit if they so desire.

At the hearing the Employer urged that the work performed by the instrument mechanics was similar to that done by the electrical mechanics. Evidence was introduced to show that the instrument mechanics perform certain electrical duties. The instrument mechanics use tools comparable to those used by the electricians. However, they usually work on low-voltage wiring doing such work as disconnecting the wiring between instruments and various parts of the instruments, whereas electricians work on as high as 4,000 voltage wires. The 13 instrument mechanics work out of the instrument shop which is under the supervision of an instrument engineer, servicing and maintaining all instruments, both electric and pneumatic, instrument panels, including the wiring of instrument panels, clocks, and scales, using temperature recorders, pressure meters, and testing electrical wiring for defects.

In view of the separate supervision and location of the instrument mechanics and the fact that they do not perform all phases of electrical maintenance work as the maintenance electricians, we find that

they are not a part of the electrician craft.⁴ Accordingly, we shall not include them in the group of electricians.

Case No. 22-RC-76

The International Association of Machinists seeks a unit of all machinists and machinist-trainees. Of the 76 first-class machinists, 55 were hired as such and 21 came from the production departments as trainees. The 2 second-class machinists, the 1 third-class machinist, and the 13 machinist-trainees transferred to plant engineering as trainees. By agreement with the Intervenor, the Employer will eliminate the second- and third-class designations when the employees who now hold such classifications die, resign, or retire. Generally, the duties of a first-class machinist are to adjust, maintain, and repair machines and to perform machine work using standard machine-shop equipment. One second-class machinist spends the majority of his time installing metal tags to equipment; the other spends practically all his time performing minor repair work to elevators. (All major elevator repair work is contracted out.) Both work out of the main shop. The third-class machinist spends substantially all his time sharpening knives for the printing department and fabricating simple knives for this and other departments.

In the main or central maintenance shop, an area is designated as the machine shop. It is to this area the 16 machinists, first class, 2 machinists, second class, 2 oilers, and 4 machinist-trainees report to a machine shop foreman for work assignments. It is their responsibility to repair and inspect pumps, elevators, tractors, and warehouse equipment. They fabricate parts, or fit stock parts for various machines whenever necessary, and may use blueprints, sketches, or models for this work.

Three machinists are assigned to each night shift crew and the elevator crew on the 4 to 12 shift, under the supervision of the night maintenance foremen. All machinists rotate on these night shift assignments, and when on the night shifts are assigned helpers to assist in the work.

In the area shops there are 57 machinists and 9 machinist-trainees, and 7 oilers. In conjunction with the other maintenance mechanics in the shop, the machinists have as their primary duty that of keeping the machinery operating at capacity.

The Petitioner contends, and we agree, that the machinists are craftsmen who regularly exercise their craft skills and may comprise an appropriate unit if they so desire.⁵ Moreover, the Petitioner is a

⁴ See *North American Aviation, Inc.*, 108 NLRB 863; *Marinette Paper Company*, 114 NLRB 1452, 1457; cf. *Koppers Company, Inc.*, 117 NLRB 422, 424.

⁵ *E. I. du Pont de Nemours and Company*, 117 NLRB 849.

labor organization which historically and traditionally represents these craftsmen.

There are also 20 machine adjustors assigned to 3 of the area shops from the production department. Like the maintenance mechanics, they are under the supervision of the area master mechanic. Their principal duty is to maintain and adjust the production line equipment. From 26 to 28 first class machinists perform the duties of an adjustor each day, and when not assigned to the job of an adjustor, in many instances machinists work alongside of an adjustor doing identical work. Evidence reveals that the job of an adjustor requires all the skill that a machinist exercises except the ability to fabricate parts. In 1954 the Employer and the Intervenor reached an agreement to discontinue the adjustor classification when the occupants of the classification transferred, died, or retired, and that the jobs thereafter be filled with first-class machinists. At the time of the hearing, three replacements had been made, and several were temporarily filling these jobs. The record does not disclose the training background of adjustors, however, in view of the evidence above, the same supervision, and the similarity of duties, we find that the adjustors exercise machinist craft skills and include them in the machinist unit herein found appropriate.

In its brief, the Employer challenges the right of the two independent unions whose petitions are hereafter discussed, to craft severance under the qualifications established in *American Potash*.⁶ We find no merit to the Employer's contention. The Board has held that a union organized for the sole and exclusive purpose of representing members of its particular craft meets the traditional craft union test.⁷

Case No. 22-RC-83

The Independent Union of Carpenter-Millwrights of Colgate-Palmolive Company seeks a unit of all carpenter-millwrights and carpenter-millwright trainees.

In the main shop, under the supervision of a carpenter-millwright foreman, there are 22 carpenter-millwrights, 6 carpenter-millwright trainees, and 15 mechanics' helpers. Seventeen additional carpenter-millwrights are assigned to the area shops, and 2 work on the 2 night shifts under the night maintenance foreman. Of the total number of carpenter-millwrights employed by the Company, 22 were hired as first-class carpenter-millwrights, 1 as a second-class carpenter-millwright, and 1 as a first-class carpenter. The remaining 17 first-class carpenter-millwrights transferred to plant engineering as trainees as did the present 6 trainees.

⁶ *American Potash & Chemical Corporation*, 107 NLRB 1418.

⁷ *International Harvester Company*, 111 NLRB 606; *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618.

The carpenter-millwright designation is a combination of these two crafts. Their principal functions are to install machines, fabricate and install accessory equipment, including supports, erect rigging, and perform structural work. When assigned to an area, the principal function is repair and maintenance, to keep the machinery in operation.

Petitioner's witness testified that in the area shops, he spent about 60 percent of his time on millwright duties and 40 percent on carpenter work as most of the area shops do not have carpentry tools. The opposite was true when he worked in the main shop. There he spent about 80 percent of his time in carpentry work and the balance of time in millwright duties. The Employer's plant engineer testified that the carpenter-millwright performs 95 percent millwright work and 5 percent carpentry work. Carpenter-millwrights furnish their own tools, including handsaws, wood tools and hand braces, various types of hammers, center punches, mortise gages, etc., and are assigned a section of the main shop where they have separate benches and their large machines are located.

We find that the carpenter-millwrights as a group are predominantly skilled millwright employees using the customary tools of their craft and performing basic millwright and carpentry work and that they are entitled to sever as an appropriate unit, if they so desire.⁸ The record shows that the Petitioner, a labor organization, was formed for the sole purpose of representing the carpenter-millwright craft at the Employer's New Jersey operation and intends to confine itself to such craft. Accordingly, we find that the Petitioner is a craft union and meets the traditional craft union test as established by the Board.

Case No. 22-RC-84

The Independent Union of Tinsmiths of Colgate-Palmolive Company seeks a unit of all tinsmiths and tinsmith trainees. There are 15 tinsmiths and 3 trainees. All are located in the main shop under a foreman whose supervision is limited to tinsmiths. Four of the tinsmiths and the 3 trainees transferred to plant engineering from other departments; others when hired were required to have 4 years training or the equivalent of 4 years outside experience. The tinsmiths perform metalwork which includes layouts, patternmaking, forming, soldering, and spot welding in a tinsmith shop equipped with tinsmith tools. The tinsmiths make machinery guards, exhaust ducts, stainless steel shoots, sheet metal coverings for floors and tables, hoppers, trays, and pan hoods. At times they work from blueprints and at other times they are told what is needed and must use their own judgment in fabricating something to meet the need. The tinsmiths use a

⁸ *Marinette Paper Company*, 114 NLRB 1452 at p. 1456; *Lamson and Sessions Company*, 81 NLRB 12.

spot welder which is designated as a tinsmith machine. None of the tinsmiths are assigned to area shops or work on the night shifts. As the tinsmiths constitute a highly skilled and well recognized craft group, we find they may be separately represented notwithstanding the history of collective bargaining on a broader basis.

The Petitioner presented evidence that it was organized for the sole purpose of seeking recognition for the tinsmiths at Colgate-Palmolive Company. Accordingly, we find that the Petitioner is a traditional craft union within the meaning of *American Potash*.⁹

Helpers: The mechanics' helpers are not generally assigned to any craft or group of mechanics because of any special skill. They assist the mechanics at the mechanics' direction, use any and all tools at the direction of the mechanics, clean up, carry tools, and secure tools and supplies from the storeroom. On the night shifts, a helper is assigned to work with each electrician, machinist, and pipefitter. Helpers, as such, can never become first-class mechanics. But, if a helper has the qualification, he may bid to enter as a trainee as some have. The agreement between the Employer and the Intervenor shows that helpers receive approximately 50 cents an hour less than first-class mechanics. As none of the helpers are assigned to work regularly with any particular category of maintenance mechanics, and they are not in the line of progression to any of the maintenance crafts, we find they are unlike those normally included in craft units, and do not include them in any of the groups of craftsmen found severable herein.¹⁰

In view of all the foregoing, we shall make no final unit determination at this time, but shall direct that the questions concerning representation that have arisen be resolved by separate elections by secret ballot among the employees in the following groups employed by the Employer at its Jersey City, New Jersey, operation, excluding from each group all employees in all other groups, all office clerical employees, professional employees, and all other employees, guards, watchmen, confidential employees, and supervisors as defined in the Act:

(a) All electricians and electrician-trainees; (b) all machinists, machinists-trainees, and machine adjustors; (c) all carpenter-millwrights and carpenter-millwright trainees; and (d) all tinsmiths and tinsmith trainees.

If a majority of the employees in any voting group from (a) to (d), inclusive, select the union seeking to represent them separately, those employees will be taken to have indicated their desire to constitute a separate bargaining unit and the Regional Director conducting the election is instructed to issue a certification of representatives to the

⁹ *International Harvester Company*, 111 NLRB 606.

¹⁰ *Virginia-Carolina Chemical Corporation*, 101 NLRB 1336; *American Cyanamid Company*, 110 NLRB 89, 94.

labor organization selected by the employees in each group for such unit, which the Board, in such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority do not vote for the union which is seeking to represent them in a separate unit, these employees shall remain a part of the existing production and maintenance unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Elections omitted from publication.]

McFarling Bros. Midstate Poultry & Egg Co. and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 35-RC-1529. June 20, 1958

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 John H. Rogers, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record¹ in this case, the Board finds:

1. The Employer contends that it would not effectuate the purposes of the Act for the Board to assert jurisdiction over its operations. The Employer is engaged in raising, purchasing, processing, and selling poultry and eggs at wholesale in Indianapolis, Indiana. During the calendar year 1957 the Employer's total sales amounted to \$1,600,000, of which \$7,687 represented sales directly out of State. During that year, sales to companies, each of which the parties stipulated had a direct outflow in excess of \$50,000, amounted to \$67,856. The parties disagree as to whether the following transaction should also be included in the Employer's indirect outflow:

During the year \$71,936 worth of poultry was shipped to the Employer from out of State. The Employer paid for and acquired title to this poultry. The Employer stored the poultry in its Indianapolis warehouse, and later delivered it in Indianapolis to Armour and Company, receiving \$71,936 plus handling charges in payment therefor. The Employer has included the handling charges in its gross sales figures, but contends that the \$71,936 it received for the sale of this poultry should not be included in its indirect outflow because it was merely a "paper transaction," the poultry having been purchased for the account of Armour and Company and segregated

¹ The request for oral argument by the Employer is denied, as the record including the Employer's brief, adequately presents the issues and the positions of the parties.