

**Minnesota Mining & Manufacturing Company (Irvington Varnish and Insulator Company Division) and District 50, United Mine Workers of America, Petitioner**

**Minnesota Mining & Manufacturing Company (Irvington Varnish and Insulator Company Division) and International Union of Operating Engineers, Local 68, AFL-CIO, Petitioner.** *Cases Nos. 22-RC-710 and 22-RC-721. November 28, 1960*

## 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 Alfred J. Hill, 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 these cases, the Board finds:

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.<sup>1</sup>

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. The Employer, at its Newark, New Jersey, plant, is engaged in the manufacture of chemicals and capseals. Between 1941 and 1945, it bargained with the Painters and the IAM, as joint representatives, for the production and maintenance employees at its plant. Since 1945, by mutual agreement between the Employer and Intervenors, the Employer has recognized the Painters as the bargaining agent of an overall unit excluding, among others, certain of the maintenance employees, and it has recognized the IAM as the bargaining representative of the maintenance employees not represented by the Painters. More specifically, for example, the last contract between the Employer and Painters covering all employees excludes from its coverage, among others, tool- and die-makers, machinists, machinists' millwrights, electricians and their respective apprentices and helpers, and oilers. The most recent contract between the Employer and IAM, which runs concurrently with the Painters' contract, and has virtually identical provisions dealing with terms and conditions of employment, covers a unit of "all tool and die makers (first and second class), machinists, machinists' millwrights, electricians, and their respective apprentices and helpers, and oilers."

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<sup>1</sup> Paint, Varnish and Allied Products, Local Union No. 1310, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, hereinafter referred to as the Painters, and International Association of Machinists, District 47, AFL-CIO, hereinafter referred to as the IAM, were permitted to intervene on the basis of their respective contracts with the Employer.

In this proceeding, the UMW seeks to represent in a single unit all production and maintenance employees currently represented by the Painters as well as those maintenance employees currently represented by the IAM. The Operating Engineers seeks to represent a unit consisting of four firemen and two pipefitters who are presently part of the unit represented by the Painters, or, alternatively, a unit of the firemen alone. The IAM and the Painters each claims that the unit it represents is appropriate. The Employer contends that all production and maintenance employees belong in a single unit.

The Employer's plant consists of five buildings, each of which is partitioned into smaller sections which are primarily used for production purposes. The maintenance department is located in a section of one of these buildings. At the present time, the maintenance department consists of 12 employees, namely, 4 firemen, 1 carpenter class A, 1 painter class A, and 2 pipefitters, who are represented by the Painters, and 2 machinists class A, 1 electrician, and 1 oiler, who are represented by the IAM.

All maintenance employees are under the supervision of the maintenance supervisor and, except for the firemen and one machinist class A<sup>2</sup> who are assigned to the capseal division, operate from the maintenance department where they have their maintenance tools and work benches. The machinists perform such duties as operating lathes, changing bearings, and repairing and overhauling pumps and all types of machine tools. The electrician, who does not appear to be licensed, is responsible for the maintenance of all electrical equipment throughout the plant. The oiler is actually a machinists' helper. The carpenter class A works both as a carpenter and a painter, and the painter class A works as a painter. The pipefitters are engaged in pipe maintenance. In the past, they have watched the boilers in infrequent emergency situations. All the aforementioned employees work primarily in the production area.

The firemen, although under the supervision of the maintenance superintendent, are located in the boilerhouse, which is separated by firewalls from the rest of the building in which it is located. An outside passageway leads from the boilerhouse to the rest of the building. The firemen are licensed. They have little contact with other employees. Their duties, which consist of maintaining steam for heating and production purposes, confine them exclusively to the boilerhouse where they eat their meals and have their own lockers and washroom facilities. They do some of their own repair work, such as repairing minor leaks in the boilers.

Upon the entire record, we reject the contention of the Intervenors that the contract units separately represented by them should be found appropriate. The units proposed by them cannot be justified

<sup>2</sup> This employee is also supervised by the capseal supervisor.

on a craft or departmental basis or by any other criteria employed by the Board in establishing bargaining units. The bargaining history in their favor stems from agreements between the Employer and Intervenors which have divided the maintenance employees into units along jurisdictional lines and is therefore alone insufficient to warrant a finding that either of the existing units is appropriate.<sup>3</sup> On the other hand, as urged by the Employer and UMW, the integrated nature of the Employer's operation and the close community of interest shared by all the employees make it plain that a plantwide unit composed of the employees who have been represented by both the Intervenors would be appropriate under the Board's standards of appropriateness. At the same time, it also appears, and we find, that the firemen form a homogeneous and functionally distinct powerhouse group such as the Board has held may constitute a separate appropriate unit in the circumstances of this case.<sup>4</sup> As it further appears that the pipefitters are not closely associated with the firemen, we shall not join them with those employees, but shall include them in the production and maintenance unit.

Accordingly, we hold that the employees at the Employer's Newark, New Jersey, plant, in the following voting groups, excluding office clerical employees, laboratory technicians, professional employees, guards, executives, and supervisors as defined in the Act, may constitute either a single appropriate unit or separate appropriate units: (1) all production and maintenance employees, including pipefitters, but excluding powerhouse employees; (2) all powerhouse employees, excluding pipefitters. We shall make no final unit determination at this time but shall first ascertain the desires of the employees themselves. Thus, we shall place the names of District 50, United Mine Workers of America, Paint, Varnish and Allied Products, Local Union No. 1310, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, and International Association of Machinists, District 47, AFL-CIO, on the ballot in the election in voting group 1, and the names of District 50, United Mine Workers of America, Paint, Varnish and Allied Products, Local Union No. 1310, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, International Association of Machinists, District 47, AFL-CIO, and Operating Engineers, Local 68, AFL-CIO, on the ballot in the election in voting group 2.<sup>5</sup> If a majority of the em-

<sup>3</sup> *Utility Appliance Corp.*, 106 NLRB 398.

<sup>4</sup> *North American Aviation, Inc.*, 115 NLRB 1090, *Hawley & Hoops, Inc.*, 115 NLRB 1276; *New England Confectionery Company*, 108 NLRB 728

<sup>5</sup> The Painters and the IAM have not taken alternative positions herein. Should either or both of them not wish to participate in the elections directed, they may withdraw their names from the ballots upon notice to that effect to the Regional Director within 10 days from the date of issuance of this Decision and Direction of Election. Also, they may appear on the ballots as joint representatives, if they both so agree and submit satisfactory evidence to the Regional Director of such agreement, and if they should win, they

ployees in voting group 2 selects the Operating Engineers, they 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 Operating Engineers for such unit, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. However, in the event a majority of the employees in voting group 2 does not vote for the Operating Engineers, those employees will appropriately be included with the employees in voting group 1 and their votes will be pooled with those in voting group 1.<sup>6</sup> The aforesaid Regional Director is instructed to issue a certification of representatives to the labor organization selected by the majority of the employees in voting group 1 or in the pooled group, as the case may be, which the Board, in such circumstances, finds to be a unit appropriate for purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

MEMBERS FANNING and KIMBALL took no part in the consideration of the above Decision and Direction of Elections.

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will be certified jointly as the bargaining representative of the employees in the entire appropriate unit. The Employer may then insist that they bargain jointly for such employees as a single unit.

<sup>6</sup> If the votes are pooled, they are to be tallied in the following manner: The votes for the labor organization seeking a separate unit in voting group 2 shall be counted as valid votes, but neither for nor against the other labor organizations on the ballot. All other votes are to be accorded their face value, whether for representation by the aforementioned unions on the ballot or for no union.

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**Malden Publications, Inc., Medford Publications, Inc. and Local 32, Newspaper Guild of Greater Boston, American Newspaper Guild, AFL-CIO, Petitioner.** *Case No. 1-RC-5471. November 28, 1960*

## DECISION AND ORDER CLARIFYING CERTIFICATION

On February 10, 1959, the Regional Director for the First Region issued a certification of representatives in the above-entitled proceeding, in which the Petitioner was certified as the exclusive bargaining representative of the employees of the editorial department of the Employer's two publications located at Malden and Medford, Massachusetts, excluding, *inter alia*, supervisory employees. Thereafter, on April 22, 1960, the Petitioner filed a request for clarification of certification, in which it requested the Board to find that Archie Birtwell, assistant editor of the Malden News, is not a supervisory employee, and thus within the certified unit, and on May 23, 1960, the Employer filed a statement in opposition thereto. Thereafter, on