

of his discharge. On the other hand, the Respondents offered evidence that Santiago was deficient in certain respects and Marcano testified that Santiago had been criticized. I believe that it is unnecessary to recite and weigh the evidence. This is so because certain facts combine to dictate the conclusion that the General Counsel has not sustained his burden of proof. *First*, Flores' affidavits have probative value only in discrediting Flores' testimony and not in supporting a finding that Santiago was invalidly discharged.¹² *Second*, Santiago had been at work only a brief period on a trial basis and there is no doubt that he incorrectly assembled a large number of pile-ups and coils on the day of his discharge. *Third*, Santiago was not especially active in the Union, his display of union insignia on his clothing and automobile was not unusual, and no supervisor spoke with him concerning his union sympathies. *Fourth*, the disposition above of the alleged violations of Section 8(a)(1) preclude a finding that the Respondents were hostile to the right of Santiago to engage in union activities.

In summary, I recommend that the complaint be dismissed in its entirety.

¹² Assuming *arguendo* that Flores occupied such a supervisory status that his affidavits could be considered as admissions against the Respondents' interest (see *Grove Shepherd Wilson & Kruge, Inc., et al.*, 109 NLRB 209, 215), two sound reasons exist for rejecting the affidavits as proof that Santiago was invalidly discharged: (1) Unlike some cases before the Board in which witnesses did not repudiate, or sought unsuccessfully to repudiate, their affidavits (cf. *County Electric Co., Inc., et al.*, 116 NLRB 1080; *Norrich Plastics Corp.*, 127 NLRB 150), in the instant case Flores successfully repudiated his affidavits by branding himself as a deliberate, willing perjurer; and (2) unlike a case in which there was credible testimony that an affiant upon another occasion had made oral admissions consistent with statements in the affidavit which he sought to repudiate (*Anthony C. Markitell, et al.*, 99 NLRB 399), here there is no evidence that Flores made such oral admissions.

Aerojet General Corporation and International Union, United Welders, Petitioner.¹ Case No. 21-RC-6191. January 31, 1961

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Wilford W. Johansen, 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 this case,² the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations named below claim to represent certain employees of the Employer.
3. No question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act, for the following reasons:

The Petitioner seeks to sever a craft unit of welders from the existing production and maintenance unit presently represented by the

¹ The name of the Petitioner appears as amended after the close of the hearing by agreement of the parties.

² The Employer also requested oral argument. This request is hereby denied as the record, including the briefs, adequately presents the issues and positions of the parties.

United Steelworkers of America, AFL-CIO, herein called the Intervenor. The Petitioner would also include in this unit seven employees classified as experimental mechanics A, who are admittedly highly skilled welders working in the presently unrepresented research and development division at the Employer's plant. The Employer and Intervenor contend that the unit sought is inappropriate.

The record shows conclusively that the welders in the various classifications involved herein are highly skilled craftsmen. Although some of them presently work on welding machines approximately 10 percent of their time, they are required to be capable of exercising established welding skills. They use the traditional welding processes of gas, electric arc, and heliarc, and must pass Air Force certification tests, which require renewal at 6-month intervals in each separate metal before they are permitted to work on such metals as stainless steel, aluminum, 4130 molychrome, and other new and difficult metals used in the production of rockets and guided missiles. Some welders hold as many as six certifications, and, depending upon classification, are required to have a minimum of 5 years' welding experience before they are hired. They must also be able to read blueprints or travelers to determine how the weld should be accomplished, and must follow Air Force specifications to determine what type weld material should be used on parts which are subjected to minute inspection by X-ray, magna flux, and ultraviolet light. Contrary to the contention of the Employer and the Intervenor, the welders involved herein are, in effect, engaged in the same industry as the welders found to be craftsmen in *Hughes Aircraft Company*,³ and exercise duties and skills similar to those of the welders in that case.⁴ Accordingly, we find that the employees sought by the Petitioner constitute a craft group of the kind which the Board has held may constitute a separate appropriate craft unit.⁵ We further find that the Petitioner is the traditional representative of such employees. However, because the experimental mechanics are now unrepresented, they are, under established Board policy, entitled to a self-determination election before being merged in a broader unit.⁶ Before directing a self-determination election, the Board must be administratively satisfied that the petitioning union has a sufficient representative interest in the group of employees in question. In the instant case, the Petitioner has failed to make the

³ 117 NLRB 98.

⁴ See also *Northrop Aircraft, Inc.*, 117 NLRB 1717; *Royal Jet Incorporated*, 118 NLRB 1558, and *Lockheed Aircraft Corporation*, 121 NLRB 1541.

⁵ See also *E. I. du Pont de Nemours and Company (Houston, Texas, Plant)*, 126 NLRB 885, footnote 3.

⁶ See, e.g., *Fisher Corporation, Ltd.*, 128 NLRB 504; *Sutherland Paper Company*, 122 NLRB 1284; *The Zia Company*, 108 NLRB 1134. The *Harvey Paper* case, cited by our dissenting colleagues, has never been followed by the Board and is clearly inconsistent with the subsequently decided *Sutherland Paper* case.

necessary showing of interest among the experimental mechanics in the research and development division although it has made an adequate showing among the welders in the production and maintenance unit. Therefore, we cannot direct an election among such employees. Because a unit of welders excluding the experimental mechanics would include only a segment of the Employer's welders and would therefore not constitute an appropriate unit, we shall dismiss the petition.⁷

[The Board dismissed the petition.]

MEMBERS FANNING and KIMBALL, dissenting:

We are not cognizant of any rule, purpose, or logic which would justify our colleagues' requirement of a self-determination election for the small segment of the craft welders who are presently unrepresented. Here the Petitioner is seeking for the first time a craft unit of welders the bulk of whom are part of an existing production and maintenance unit and the remainder unrepresented. The unrepresented welders are not sought to be merged into a broader unit *which already exists* and from which they have been excluded. There is simply no reason therefore to accord this small group any special status on the basis that the effective expression of their wishes would otherwise be submerged because of the numerical superiority of those in the existing unit.

We had thought the principle had been made plain beyond misunderstanding in a long history of decisions. The lead *Zia* case⁸ spells out the doctrine, *viz*:

. . . where a group of employees has been excluded from a unit in which they may appropriately be included, they should not be placed in the *established bargaining unit* without first being extended the opportunity to vote as to whether or not they desire to be represented by the *current bargaining agent of the established unit*. Adherence to this principle will, in the opinion of the Board, tend to insure that the wishes of small groups of employees no longer will be thwarted by the numerical superiority of employee-members of an *existing historical unit from which the former have been excluded* . . . [Emphasis supplied.]

Consequently, we disagree with the majority's dismissal of the petition on the ground that the Petitioner failed affirmatively to demonstrate a separate showing of interest for the unrepresented welders. We can only view the holding of the majority as an unreasonable obstacle cast in the way of a union properly seeking an opportunity to represent a perfectly appropriate craft unit concerning which it has

⁷ *National Cash Register Co.*, 119 NLRB 486, 489, and cases cited therein.

⁸ *The Zia Company*, 108 NLRB 1134, 1136.

made the customarily required showing of interest. We would direct the election.⁹

⁹ See, e.g., *Harvey Paper Products Company, etc.*, 117 NLRB 26. The majority avoids the issue, we believe, by centering its attack on the *Harvey* case which it states is inconsistent with *Sutherland Paper Co.*, 122 NLRB 1284. Our citation of *Harvey*, as already plainly shown, is illustrative of a longstanding and fundamental principle reflected in the lead *Zia* case, to which, indeed, our colleagues advert as authority. *Sutherland* certainly did not in fact or contemplation overrule *Zia* and the many other like cases following its basic rule. Nor is *National Cash Register Co.*, 119 NLRB 486, also cited by our colleagues, of any possible assistance to the majority position. There, severance was sought of a craft unit composed of employees *already represented* in several different existing units. Under the *Zia* rule, the petition was properly dismissed because an adequate showing of interest was not established for each of the *represented* groups sought to be combined in the craft unit. Here, as noted, the Petitioner's showing of interest is perfectly adequate within the rule.

Longs Stores, Inc., a California corporation,¹ Petitioner and Retail Clerks Union, Local 1222, Retail Clerks International Association, AFL-CIO. Cases Nos. 21-RM-678 and 21-RM-679. January 31, 1961

DECISION AND DIRECTION OF ELECTIONS

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

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.

¹ The Employer's name appears as amended at the hearing.

² The original petitions in these cases requested elections in units of all sales and stock employees, including pharmacists, at both the College Grove and El Cajon stores of the Employer. At the hearing, the Employer was permitted to amend the petitions to request elections in separate units of pharmacists and sales and stock employees at each store, or, in the alternative, separate overall units of pharmacists and sales and stock employees at all four of the Employer's San Diego County stores. The Union moved to dismiss the petitions on the ground they are inappropriate on their face because they request elections in a single unit containing both professional and nonprofessional employees without giving the professionals the separate election required by Section 9(b)(1). Therefore, the Union argues, the notice of hearing was improperly issued and the petitions could not be amended at the hearing to correct this defect. There is no merit to the Union's contentions. Section 9(b)(1) of the Act is not a general prohibition against the establishment of bargaining units composed of both professional and nonprofessional employees. Indeed, the Board consistently finds such units appropriate when professional workers indicate in a separate election that they desire to be included in a larger bargaining unit. As the amendments simply requested the voting procedure required by the statute, we find they were properly permitted. *Westinghouse Electric Corporation*, 107 NLRB 16.