American Cyanamid Company[1] ***and*** **Pensacola Building and Construction Trades Council,**[2] **Petitioner**

American Cyanamid Company *and* Textile Workers Union of America, AFL–CIO,[3] **Petitioner.** *Cases Nos. 15–RC–2175 and 15–RC–2179. February 2, 1961*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Fallon W. Bentz, 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, 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.[4]

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 Council seeks to represent a unit of the maintenance employees at the Employer's Santa Rosa plant, near Milton, Florida. TWUA petitions for a unit of production and maintenance employees at this plant. Chemical Workers and UMW intervened for the production and maintenance unit. The Employer agreed to the appropriateness of TWUA's requested unit and moved to dismiss the Council's petition on the ground that a maintenance unit is inappropriate. TWUA and Chemical Workers joined in the motion.

The Employer manufactures acrylic fibers at its Santa Rosa plant. There is no history of collective bargaining for any of the plant employees. Under the plant manager are five departments: engineering, technical, production, personnel relations, and accounting. The engineering department has four sections: engineering, purchasing, in-

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

[2] Herein called the Council.

[3] Herein called TWUA.

[4] International Chemical Workers Union, AFL–CIO, and District 50, United Mine Workers of America, herein referred to as Chemical Workers and UMW, intervened. TWUA moved to dismiss the Council's petition on the ground that the Council is not a labor organization. However, as we find, upon the record, that the Council is a labor organization as defined in the Act, the motion to dismiss on this ground is denied

dustrial engineering, and maintenance. The production department consists of stores and traffic, chemical area, fiber area, and utilities. The employees sought by the Council work in the maintenance and utilities sections of these two departments. These employees perform maintenance and utility functions for the plant and have separate supervision. Although other employees in the technical and production departments perform certain maintenance functions on their machinery and equipment, they are not primarily maintenance employees.

The record also indicates that many of the requested maintenance employees work in close conjunction with production employees. Also, maintenance employees receive the same benefits as production employees.

The Employer contends, *inter alia*, that its operations are so integrated and the interrelationships between its production and maintenance employees are so close that no basis exists for establishing a separate unit of maintenance employees herein on a departmental basis. In the past we have rejected similar contentions in cases involving operations like the Employer's and followed the policy of permitting the separate representation of maintenance employees in the absence of a bargaining history for production and maintenance employees.[5] However, we have concluded that where a question concerning representation has been raised by a labor organization seeking to represent all the production and maintenance employees involved, no sound basis exists for finding that a narrower unit limited to maintenance employees may be appropriate. Therefore, as TWUA by its petition seeks to represent a unit of production and maintenance employees at the Employer's Santa Rosa plant, we find that the maintenance unit sought by the Council is inappropriate and that the requested broader unit is alone appropriate herein.[6] Accordingly, we shall dismiss the Council's petition and we shall direct an election in the following unit which we find to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Santa Rosa plant, located near Milton, Florida, excluding office clerical employees, plant clerical employees, technical employees, professional employees, watchmen and/or guards, and supervisors as defined in the Act.[7]

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[5] See *Allied Chemical & Dye Corporation, Nitrogen Division*, 120 NLRB 63, 67; and cases cited therein

[6] To the extent inconsistent herewith, the cases of *Armstrong Cork Company*, 80 NLRB 1328; *Allied Chemical & Dye Corporation, Nitrogen Division, supra*; and others similar thereto, are hereby overruled The policy modification we adopt is not to be construed as barring the establishment of a separate unit of maintenance employees in industries like the Employer's where such employees *alone* are sought and there is no bargaining history on a broader basis

[7] There was no dispute as to the composition of this unit

The Council stated at the hearing that it wished to participate in the election in any unit which the Board found appropriate, and we shall place its name on the ballot for the election.[8]

[The Board dismissed the petition in Case No. 15–RC–2175.]

[Text of Direction of Election omitted from publication.]

CHAIRMAN LEEDOM, dissenting:

My colleagues, it seems to me, are changing Board policy of long standing without indicating the need for the change. While readily conceding that a unit of maintenance employees in industries like the Employer's is appropriate where such employees alone are sought and there is no bargaining history, they reach a conclusion that the same unit is inappropriate in the circumstances of this case. The fact that another union here seeks the more comprehensive production and maintenance unit should not, *ipso facto*, obliterate an otherwise appropriate unit. This obliteration cannot be justified in my judgment by the generality that "no sound basis exists for establishing a narrower unit." Accordingly, I would adhere to past practice, and direct two elections, namely, in a voting group of maintenance employees and in a voting group of the remaining plant employees.

MEMBER FANNING, dissenting:

I cannot agree that the long-established Board policy [9] of permitting self-determination elections among maintenance employees, where there has been no history of bargaining on a broader basis, should be overruled, as the majority is doing here.

It is my opinion that the primary advantages in the performance of governmental functions by administrative agencies are flexibility and the capacity of expert specialists to meet new problems in specialized areas with new solutions. However, I am also firmly convinced that an agency such as the National Labor Relations Board has the responsibility of establishing guideposts, which are as clear and understandable as the circumstances and the Board's organic Act permit.

Once such guides have been established they should not be obliterated without good, sufficient, and carefully weighed reasons. Particularly in the area of "appropriate unit"—in itself a technical and difficult area in which to chart a consistent course—is this discretion required. Employers and labor organizations alike should be able to follow the Board's guideposts with some degree of assurance that they are on the right road. It should not be a game of chance.

[8] Moreover, wherever we deny a petition for a maintenance unit we shall treat it as a request for intervention in a petition for a broader unit and for a place on the ballot in any election directed therefor, unless a contrary request is made.

[9] See, for example, *Electro Metallurgical Company*, 56 NLRB 1464.

Has the majority here demonstrated the wisdom, necessity, or advisability of its reversal of Board policy? I think not.

As concerned as I am about capricious change in policy, I am more disturbed about the violence being done to one of the most explicit and emphatic directives set forth in the Act. Section 9(b) directs the Board to decide which of several possible units is appropriate "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act." Certain limitations and amplifications of this congressional mandate are set forth in Section 9(b) and (c) (5), but they are not germane to the issue involved herein. The fact is that Congress could not have been more emphatic. It prescribed that the Board in each case make such appropriate unit finding as would assure to employees the "fullest freedom" in exercising the rights guaranteed by the Act. It is elementary to point out that one of those rights is the right to *self-organization.*

It is further noted that in footnote 6 the majority implies that, if there were no petition filed at the present time for the overall unit, it might direct an election in the maintenance group. The majority, therefore, seems to recognize that the Council's petition is for an appropriate unit, but that the fortuity of the filing of another petition renders such appropriate unit inappropriate. I cannot accept this.

I believe that the maintenance employees in this case constitute a distinct and homogeneous group, such as the Board has long permitted—in the absence of bargaining history on a broader basis—to be separately represented if they so desired, and that they are entitled to a self-determination election.

Keystone Floors, Inc. d/b/a Keystone Universal Carpet Company *and* Retail Clerks International Association, Retail Store Employees Union, Local 1407, AFL–CIO. *Case No. 6–CA–1932. February 6, 1961*

DECISION AND ORDER

On September 19, 1960, Trial Examiner John P. von Rohr issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Inter-