Warner-Lambert Pharmaceutical Company, Inc. (Warner-Chilcott Laboratories Division)[1] ***and*** **Oil, Chemical and Atomic Workers International Union, AFL-CIO, Petitioner.** *Case No. 22-RC-1073. June 30, 1961*

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 James F. Morton, 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 this case to a three-member panel [Members Leedom, Fanning, and Brown].

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.[3]

4. The Petitioner seeks to represent a unit of maintenance employees. It contends that a unit comprising all painters, outside maintenance employees, fabricators, refrigeration and air-conditioning mechanics, carpenters, machinists, pipefitters, electricians, utility servicemen, powerplant operators and powerplant operator-

[1] The name of the Employer appears as amended at the hearing

[2] The Employer contends that the hearing officer erred in revoking certain subpenas. The Employer sought to adduce evidence from the Petitioner's representatives to show that the Petitioner customarily represented units of production and maintenance employees and did not traditionally represent units of multicraft maintenance employees. The hearing officer on motion of the Petitioner revoked the subpenas on the ground that the evidence sought was irrelevant in the instant case. The hearing officer thereafter denied the Employer's motion for a continuance to permit it to appeal his ruling to the Board. The Employer's request of the Board for permission to appeal was denied with the right to renew its motion in its brief to the Board. We find that the hearing officer properly revoked the subpenas. Contrary to the Employer's contention, it is well established that the traditional representative requirement established by the *American Potash* case (107 NLRB 1418) is not applicable to a situation such as this where the petitioner is not seeking to sever a craft or traditional departmental group from an existing unit. See *Campbell Soup Company,* 109 NLRB 518, and *Industrial Rayon Corporation,* 128 NLRB 514. None of the cases cited by the Employer supports its contrary contention.

[3] The Employer moves for a dismissal of the petition on the grounds that, contrary to the statement in the petition, no demand for recognition was received by the Employer prior to the filing of the petition and that the demand, when received, did not clearly designate the unit sought. As the Employer failed to recognize the Union after receiving the demand for recognition and a clarification of the unit sought by the Petitioner at the opening of the hearing, we hereby deny the Employer's motion to dismiss the petition. See *Advance Pattern Company,* 80 NLRB 29, and *Plains Cooperative Oil Mill,* 123 NLRB 1709, footnote 1

mechanic, machinist apprentices, tool crib attendants, assistant tool crib attendants, masons, fork truck mechanics, and maintenance helper is appropriate, but is willing to accept any maintenance unit which the Board finds appropriate. The Employer contends that the only appropriate unit is one consisting of all production and maintenance employees. However, the Employer takes the alternative position that if a unit of maintenance employees is found appropriate it should include, in addition to the employees sought by the Petitioner, the two matrons, a plant cleaner, a maintenance dispatcher, a plant clerical employee, three chauffeurs, and an employee classified as chauffeur-electrician.

The Employer is engaged in the manufacture and sale of pharmaceutical products. All of the employees sought by the Petitioner are engaged primarily in the repair, minor alteration, and maintenance of the equipment and physical facilities involved in the Employer's operations, except for the powerplant employees who operate high pressure boilers. All of these employees are considered by the Employer to be part of its maintenance force. All maintenance work is under the supervision of the manager of engineering with most of the craft maintenance employees under the immediate supervision of the maintenance engineer and his subordinates. There is no history of collective bargaining for any of the employees in the plant, nor is there any labor organization seeking to represent a unit of production and maintenance employees. Of the additional employees whom the Employer seeks to include in the maintenance unit, all except the chauffeurs and chauffeur-electrician are under the supervision of the maintenance engineer and generally work in, or report to, the same immediate area as the other maintenance employees.

As the record in this case establishes that the maintenance employees are readily identifiable as a group whose similarity of function and skills create a community of interest, even though the Employer's operations are to some extent integrated, we find, contrary to the Employer's contention, that a unit of maintenance employees is appropriate.[4]

However, there remains for consideration whether the unit should include the matrons, and other employees whose inclusion is urged by the Employer. The record shows that, except for the chauffeurs and chauffeur-electrician, these employees are all under the supervision of the maintenance engineer and that their work is clearly and principally devoted to plant maintenance. Thus, the matrons issue uniforms, maintains the ladies' rooms, and issue paper towels and supplies from a stockroom in the maintenance department. The

[4] See *American Cyanamid Company*, 131 NLRB 909.

plant cleaner cleans the maintenance shops, mechanical equipment rooms, men's rooms, and production areas which have been littered by maintenance workers. The maintenance dispatcher processes and relays to the appropriate supervisor all requests for maintenance in the plant. He has continual contact with maintenance employees. The plant clerical for the maintenance department maintains the technical files for several thousand pieces of equipment used in the plant, has an office in the maintenance area, works exclusively for the maintenance division, and has frequent contact with the maintenance employees.

In view of the foregoing, we shall include the matrons, plant cleaner, maintenance dispatcher, and plant clerical in the unit herein found appropriate.[5]

The chauffeurs, on the other hand, are engaged principally in work other than maintenance work. They spend most of their time in picking up and delivering mail, passengers, drugs, and equipment. In so doing, they serve mainly the production, mail, and personnel departments. The chauffeurs wait for calls at the the shipping dock and are directly supervised by the supervisor of traffic who reports to the manager of planning, warehousing, and shipping. As the chauffeurs do not spend a substantial amount of their time performing maintenance duties and as they are separately supervised, we shall exclude them from the maintenance unit.

Although the chauffeur-electrician spends a substantial amount of his time performing electrical maintenance work, it appears that his primary function is to serve as chauffeur for one of the Employer's officers. During 1960 he spent less than 50 percent of his time working as an electrician. In view thereof we shall, in accordance with established Board policy, exclude the chauffeur-electrician from the unit of maintenance employees.[6]

We find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance employees of the Employer at its Morris Plains, New Jersey, plant, including painters, outside maintenance employees, fabricators, refrigeration and air-conditioning mechanics, carpenters, machinists, pipefitters, electricians, utility servicemen, powerplant operators and powerplant operator-mechanic, machinist apprentices, tool crib attendants, assistant tool crib attendants, masons, the fork truck mechanic, maintenance helpers, matrons, the

[5] See *Heublein, Inc.*, 119 NLRB 1337, 1339

[6] See *Denver-Colorado Springs-Pueblo Motor Way*, 129 NLRB 1184 Member Fanning would include the chauffeur-electrician in the unit with respect to his electrician work The record shows that he spends a substantial part of his time in such work Member Fanning, for the reasons expressed in his dissent in *Denver-Colorado Springs*, finds that the chauffeur-electrician has sufficient interest in the question concerning representation here raised to warrant his inclusion in the unit and his voting in the election.

plant cleaner, the maintenance dispatcher, and the plant clerical employee in the maintenance department, but excluding office clerical employees, chauffeurs, the chauffeur-electrician, professional employees, all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Jack G. Buncher, d/b/a The Buncher Company *and* United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 6-CA-1917. June 30, 1961*

DECISION AND ORDER

On September 20, 1960, Trial Examiner George J. Bott 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 he 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 brief in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the Board had delegated its powers in connection with this case to a three-member panel [Members Rodgers, Leedom, and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations,[1] with certain modifications in the remedy as hereafter set forth.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It appears that following the layoffs occurring on January 15, 1960, through March 4, 1960, which have been found herein to have been discriminatory, the Respondent's business operations were more efficient and the workload could be accomplished with a reduced work

[1] The Respondent's motion requesting that the Board receive into evidence, as Respondent's Exhibit No. 50, the toll call records of The Bell Telephone Company of Pennsylvania charged to The Buncher Company at its North Side office, is denied as these records were available at the time of the hearing and were not then offered into evidence.