

change her mind about voting and that if the Union was voted out the mill would run better; (8) Nick Dawson was told that "company has spent a lot of money and made a lot of improvements . . . they haven't made any they couldn't move"; and (9) Hugh Hagen (Board's Exhibit No. 13) was asked how he thought the election was going and to vote against the Union. Accordingly, we find that such conduct interfered with the freedom of choice of the employees in the election, and we shall, therefore, also sustain the Union's objection No. 4.⁹ As we have sustained objections Nos. 4 and 5, we shall set the election aside and order a new one.

[The Board set aside the election.]

[Text of Direction of Second Election omitted from publication.]

⁹As to objections Nos 2 and 6, we find that the Petitioner's exceptions do not raise material and substantial issues thereto, and we shall, therefore, adopt the Regional Director's recommendation that they be overruled. Contrary to the Regional Director, we find that the conduct uncovered during the course of the investigation regarding the posting of a ballot on the plant's bulletin boards was not violative of our *Allied Electric Products* rule (109 NLRB 1270), as we are satisfied that the ballot in question could not be reasonably construed by the employees as having any official governmental endorsement. See, e.g., *Paula Shoe Co*, 121 NLRB 673, 675; *The Glidden Co*, 121 NLRB 752, 755-756; *Reflector Hardware Corp*, 121 NLRB 1544, 1548. Cf. *Custom Molders of P.R. & Shaw-Harrison Corporation*, 121 NLRB 1007, 1009. Accordingly, we shall overrule the Regional Director's recommendation and findings based upon the ballot in question

Blaw-Knox Company,¹ Petitioner and United Steelworkers of America, CIO.² Case No. 6-R-976. February 6, 1962

DECISION AND CLARIFICATION OF UNIT

On October 20, 1944, following a Board-directed election,³ the Board certified United Steelworkers of America, CIO, as the collective-bargaining representative of Continental Foundry & Machine Company's Peninsula plant⁴ production and maintenance employees, and, in the same proceeding, certified International Association of Machinists, AFL, herein called Machinists, as the collective-bargaining representative of the machine shop unit⁵ at the same plant. Thereafter the Employer entered into collective-bargaining agreements with the Unions covering their respective units.

¹ The parties stipulated that the Employer is the successor of Continental Foundry & Machine Co.

² International Association of Machinists, AFL, intervened on the basis of an existing contract with the Employer.

³ 58 NLRB 213, as amended on October 3, 1944

⁴ This plant is presently known as the Wheeling, West Virginia, plant of the Employer

⁵ "All Employees in the Machine Shop Department at the Peninsula plant, including blacksmiths, blacksmith helpers, chairmen, laborers, the gang leader, machine shop inspectors, but excluding the machine shop estimator, shop clerks, the weighman, and the blacksmith foreman, the labor leader, and the supervisor."

On January 21, 1957, following a consent election, the Regional Director for the Sixth Region issued a certification of representatives in Case No. 6-RC-1880 (not published in NLRB volumes) certifying the United Steelworkers of America, AFL-CIO, as the collective-bargaining representative of a unit⁶ of all clerical employees at the Wheeling and Warwood plants of the Employer.

About March 13, 1961, the Employer established a new job classification of "Metallurgical Technician" and assigned it to the clerical unit represented by the Steelworkers. The Machinists filed a grievance with the Employer protesting this assignment, contending that the metallurgical technician should be placed in the machine shop unit represented by the Machinists. The Employer denied the grievance and, thereafter, on July 3, 1961, petitioned the Board for clarification of certification, alleging, *inter alia*, that there is a dispute between the Employer and the Machinists with regard to the unit placement of the metallurgical technician. On October 26, 1961, the Board issued an order remanding the proceeding to the Regional Director of the Sixth Region for the purpose of conducting a hearing, which was held on November 20, 1961, before Gerard P. Fleischut, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this proceeding to a three-member panel [Members Leedom, Fanning, and Brown].

Upon the entire record the Board finds:

Since 1949, the Employer has used an ultrasonic reflectoscope, an electronic instrument designed to test the interior properties of metal, to test castings for internal flaws, as well as grain size and other characteristics related to the metallurgical quality of the material used in the casting. About 75 percent of the tests made using this instrument are performed in the machine shop because optimum results are obtained when the exterior of the casting is smooth, as occurs after machining, and the reflectoscope is mobile while the castings tested range up to 160 tons.

Commencing in 1952, the reflectoscope was operated by a machine shop inspector, a classification within the Machinist's unit, who submitted the results of his tests to the chief metallurgist. During 1957, P. Chapline, a routine chemist in the clerical unit represented by the Steelworkers, was trained in the use of the reflectoscope. During this

⁶ "All office clerical employees of the Company's Wheeling and Warwood plants excluding all other employees, professional employees, confidential employees, guards and supervisors as defined in the National Labor Relations Act, as amended."

Shortly after the election the unit was expanded by mutual agreement of the parties to include the metallurgical department employees. This unit is currently represented by Local No. 5502, United Steelworkers of America, AFL-CIO, herein called the Steelworkers.

period additional equipment which extended the scope of the reflectoscope's capabilities was purchased. Since June 1959, Chapline has performed all the ultrasonic inspection of rolls, forgings, castings (both rough and semifinished), gears, pinions, and various types of incoming material, as well as nondestructive testing work on items for the Employer's maintenance department, and ultrasonic inspection of rolls and castings at other Blaw-Knox plants.

The Machinists contend that the operation of the reflectoscope should be assigned to its bargaining unit because of the 5-year period during which it was operated by a member of its unit and because 75 percent of the tests performed by the reflectoscope are performed within the machine shop area.

The Employer and the Steelworkers take the position that the operation of the reflectoscope is properly a function of the metallurgical department.

In a representation proceeding, however, the Board does not determine work assignments, but rather determines the unit placement of employees doing particular work. We accordingly deny the request of the parties to determine the assignment of the operation of the reflectoscope. We will, however, determine whether the metallurgical technician is included in the unit represented by the Machinists.

The metallurgical technician spends about 50 percent of his working time operating the reflectoscope⁷ and the rest of the time working as a routine chemist in the metallurgical department or in research and development. He is supervised by the chief metallurgist. He has his locker in the metallurgical laboratory with the other members of the metallurgical department. Like other employees in the metallurgical department, the metallurgical technician is salaried; while the employees in the machine shop unit are hourly paid. Accordingly, as the metallurgical technician and the routine chemists in the metallurgical department are under common supervision, perform the same duties (with the exception of the reflectoscope operation), have the same conditions of employment, and share a community of interests, we find, contrary to the contentions of the Machinists, that the metallurgical technician is not within the unit represented by the Machinists. We, therefore, grant the petition herein and shall clarify the certification in Case No. 6-R-976 to exclude the metallurgical technician from the machine shop unit.

[The Board clarified the certification heretofore issued in Case No. 6-R-976 by specifically excluding, in the description of the machine shop unit, the classification of "metallurgical technician."]

⁷ It is clear that the location of the reflectoscope operation in the machine shop is strictly a matter of convenience arising from the mobility of the reflectoscope.