

between management and employees at the September 17 meeting. The instant case is distinguished from *Coppus Engineering Corporation v. N.L.R.B.*, 240 F.2d 564 (C.A. 1), where the employer suggested the formation of a grievance committee at an employee meeting sometime after the union had lost an election. The employees then formed a shop committee and from this, the Board inferred that the impetus for the shop committee came from the employer and that "inherent in the suggestion was a promise to recognize and deal with the shop committee." Those circumstances do not exist in the instant case. Beginning with this first contact of management with employees on the subject, management of Greystone and Donwood consistently held to their position that the representation question should be settled through the processes of the Board.

In all other, as in these respects, I find that the General Counsel has failed to sustain the burden of proof of the allegations of the amended complaint.

CONCLUSIONS OF LAW

1. Greystone Knitwear and Donwood, Ltd., are, and at all times material herein have been, affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise, and their activities affect commerce within the meaning of the Act.
2. District 65, Retail, Wholesale and Department Store Union, AFL-CIO, and Greystone Employees' Association and Knitwear Employees' Association, its successor, are labor Knitwear Corp. and Donwood, Ltd., have not engaged in unfair
3. Greystone Knitwear Corp. and Donwood, Ltd., have not engaged in unfair labor practices as alleged in the complaint herein.
4. The amended complaint should be dismissed in its entirety.

RECOMMENDATION

Upon failure of proof to support the allegations of the amended complaint, I recommend that it be dismissed in its entirety.

ACF Industries, Incorporated (formerly American Car and Foundry Company)¹ and International Association of Machinists, AFL-CIO, Petitioner. *Cases Nos. 28-RC-462 and 28-RC-475 (formerly 33-RC-462 and 33-RC-475). March 26, 1962*

DECISION AND ORDER DENYING MOTIONS

On March 5, 1954, following a Board-directed election in Case No. 33-RC-462 (now 28-RC-462), the Petitioner was certified as the collective-bargaining representative for a unit of all production and maintenance employees at the Employers Atomic Energy Commission Operations, Albuquerque, New Mexico, excluding, *inter alia*, inspectors.

On April 29, 1954, following an election in Case No. 33-RC-475 (now 28-RC-475) held pursuant to a consent-election agreement, the Petitioner was certified as the bargaining representative of a unit of all inspectors.

On December 7, 1960, the Petitioner filed with the Board in Case No. 28-RC-462 a motion for clarification seeking inclusion in the production and maintenance unit certain employees operating "machine tools and producing parts." On December 15, 1960, a similar motion

¹ The Employer's name appears as corrected at the hearing

was filed in Case No. 28-RC-475 in the Board's Subregional Office seeking clarification by the Regional Director of the inspectors' unit certification by including certain employees performing inspection work in the toolroom operation.

On June 30, 1961, the Board consolidated the two motions and directed that a hearing be held on the issues involved. Hearing began on July 19, 1961. By telegram on that date to the Board, the Petitioner moved to amend its motion in Case No. 28-RC-462 to include all employees in Company Building #5 who were engaged in heat treating, plating, welding, and to include the "tool crib attendant," in addition to employees operating machine tools who were identified as "model shop" employees. The motion to amend was granted by the Board on August 2, 1961. Thereafter, hearing was held on September 12, 13, 14, 15, and 16, 1961, before Fred W. Davis, hearing officer. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

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 [Chairman McCulloch and Members Rodgers and Fanning].

Upon the entire record in these cases the Board finds as follows:

*Case No. 28-RC-475:*² The Petitioner claims as an accretion to its inspectors' bargaining unit two senior tool and gauge technicians (Martz and Benjamin). They are employed substantially in the inspection of tools, jigs, and fixtures produced in the tool and die shop. There are two other senior tool and gauge technicians (Smiley and Barnes) not claimed by the Petitioner who "intermittently and on a more or less regular basis" perform the same type work. In all, the Employer has 11 employees in this work classification. While nine of them, including Smiley and Barnes, have their work station in the Standards Laboratory which is geographically separated from the tool and gauge inspection area, all 11 have the same supervision—supervisor-tool and gauge inspection—who in turn is under the supervisor—Standards Laboratory. Neither of these supervisors have any shop or bargaining unit inspectors under them.

As noted, senior tool and gauge technicians, Martz and Benjamin, inspect tools, jigs, and fixtures which are produced in the toolroom and are delivered to the manufacturing department for use as facilities or aids in the production of the end product. The shop inspectors do

² The Petitioner, while contending that this proceeding (Case No 28-RC-475) should be decided by the Regional Director since the certification resulted from a consent election, stated that it had "no prejudice against the Board making the decision" The Employer requests a Board decision. In view of the similarity of the motion here to that filed in Case No. 28-RC-462, the fact that a consolidated hearing was held on these motions, and the positions of the parties, we shall pass upon the motion in Case No. 28-RC-475 as well as that in Case No. 28-RC-462.

not inspect tools, jigs, or fixtures, but are production line and end product inspectors. The work of the senior tool and gauge technicians in issue requires a substantially higher level of technical competence than is required of the shop inspectors. Thus, the employees in question work to finer tolerances than do the shop inspectors and from time to time must use complex measuring equipment in the Standards Laboratory which shop inspectors do not use.

Case No. 28-RC-462: The Petitioner claims as an accretion to its production and maintenance unit certain employees employed in the development and test engineering department, commonly referred to as the D & T Lab (Building 5). Those sought are two heat treaters, classified as technical specialist and technical assistant, one plater, classified as technical assistant, two welders, classified as test engineer and welding engineer, three machine tool operators, classified as technical specialists, and one tool crib attendant, classified as technical assistant. It appears that other employees work in the same areas as these employees but they are not sought by the Petitioner. The work of this department is basically engineering and relates to research and development. Information that can be used in the manufacturing process is produced here, including new techniques of inspection. Supervision of the D & T Lab employees is separate from that of production and maintenance employees. The D & T Lab is headed by a manager with five separate section heads under him. The manager reports directly to the director of engineering who in turn reports to the vice president and general manager. Neither the laboratory manager nor the director of engineering report to or through the plant manager.

The heat treaters operate heat furnaces, metal hardness testers, prepare macro specimens for determining flow patterns in metals, and assist metallurgists. They also prepare technical reports and pass judgment on the soundness of materials, evaluate grain size, extract specimens, and make microscopic examinations, none of which work appears to be done by heat treaters in the production departments.

The plater prepares plating solutions, prepares and plates items of developmental or experimental nature, prepares cleaning solutions, assists in the development of processes and in special plating test setups. This plater's work is in the development area whereas shop platers work on plating of production items.

The welders' primary objective is to produce information which will be useful in developing procedures for eventual production use. Occasionally, they will use new equipment which may later be used in the production processes if proven feasible. They perform test welding, evaluate welding material and processes, and prepare instruction reports for shop personnel and technical reports such as process

specifications. It appears from the record that the Employer has graduate engineers in its employ who carry the same salaried job descriptions as the two welders in issue here.

Within the welding section of the D & L Lab are 2 hourly paid welders admittedly within the production and maintenance unit. These unit welders work on aspects of welding materials which are in the transitional stage between development and production for the purpose of creating a pool of trained men for the production shop and to determine the feasibility of laboratory developed welding procedures. These unit welders work not only under graduate engineers but under the general direction of the welders in issue here.

The machine tool operators are engaged principally in the making of models and prototypes of parts, jigs, and fixtures for developmental testing, design proving, and experimental engineering. They act as a support function to other development arms of the laboratory and frequently confer with project engineers and engineers in metallurgy, plastics, and other sections of the D & T Lab. None of these employees made any production piece parts.

The tool crib attendant spends about 20 percent of his time directing hourly paid laborers assigned to the D & T Lab for general housekeeping, janitorial work and material handling. He has the authority to temporarily upgrade the laborers if they perform work out of their classification, approve time off for short periods, and he can effectively recommend the transfer back to the labor pool of an unsatisfactory employee.

As indicated above, it is the Petitioner's position that the work performed by the employees in issue here should be considered accretions to the certified units. The Employer urges that these motions be denied, principally on the ground that the employees in issue are "technical" employees and should not be included in a production and maintenance unit, that they constitute only a small fraction of all the technical employees in the plant,³ and that the tool crib attendant is a supervisor.

We agree with the Employer that the motions should be denied but for the reasons stated herein. As to the tool crib attendant, the facts set forth above establish his status as a supervisor within the meaning of the Act. Respecting the other employees in issue, it is apparent, particularly as to the inspectors, that the Petitioner seeks to include only a few of the employees having similar classifications. The interests of the employees in this group, including the work they do, the skills required, and the nature of their supervision, materially differentiate them from the other employees represented by the Petitioner. Moreover, the jobs under consideration here are not newly

³ The Employer notes that it has in its employ more than 200 technical employees.

created, and have been for many years considered as being outside the unit. Under all these circumstances, to regard them as accretions, as the Petitioner contends, is not warranted. Accordingly, we shall deny the motions.

[The Board denied the motions for clarification of certifications.]

Rubin Dworkin t/a Dworkin Electroplaters and United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 4-CA-2385. March 27, 1962*

DECISION AND ORDER

On January 2, 1962, Trial Examiner Albert P. Wheatley issued his Intermediate Report herein, finding that the Respondent engaged in unfair labor practices and recommending that it cease and desist therefrom and take affirmative action, as set forth in the Intermediate Report attached hereto. The Trial Examiner also found that Respondent did not engage in certain other unfair labor practices and recommended that the allegations of the complaint in respect thereto be dismissed. Thereafter, both the General Counsel and the Respondent filed exceptions to the Intermediate Report, together with supporting briefs.¹

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].

The Board has reviewed the Trial Examiner's rulings and finds no prejudicial error. The rulings are affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications set forth below.²

We agree with the Trial Examiner that the Respondent violated Section 8(a)(1) of the Act by its unlawful interrogation of employees. We further find, however, on the basis of testimony credited by the Trial Examiner which is fully detailed in the Intermediate

¹ The Respondent's request for oral argument is denied, since the record and the briefs adequately present the issues and positions of the parties.

² Contrary to the Trial Examiner, we believe that Chase should be included in the bargaining unit of Respondent's production and maintenance employees. He spends part of his time making deliveries and pickups. The remainder of his time, and the record indicates that it is a considerable amount of time, is spent in the plant performing miscellaneous jobs as needed. His work brings him in contact with other employees in the unit and he shares the same supervision with them. We find his interests are such as to warrant his inclusion in the unit.