

Accordingly, the parties are hereby notified that, based upon the considerations expressed herein, the Board will defer action on the 8(a)(3) allegations in the complaint pending completion of the arbitration directed by the district court, and notification thereof to the Board.

The parties are further notified that the Board will not, however, hold in abeyance its action on the 8(a)(1) and 8(a)(5) allegations of the complaint, but will instead review the Trial Examiner's findings thereon and will issue its Decision with respect thereto forthwith. <

MEMBERS FANNING and BROWN took no part in the consideration of the above Notice.

**Formica Corporation, Subsidiary of American Cyanamid Co.¹
and Local 757, International Union of Electrical, Radio and
Machine Workers, AFL-CIO. Case No. 9-RM-46. May 1, 1963**

DECISION AND ORDER CLARIFYING CERTIFICATION

On April 12, 1950, the Board issued a certification of representatives in the above-entitled proceeding, certifying the Union as the bargaining representative of "all production and maintenance employees at the Hamilton County, Ohio, plant or plants of the Employer, including employees in the machine shop, toolroom, and shop clerks, but excluding office clerical employees, nurses, professional employees, all guards and supervisors as defined in the Act."

On December 12, 1962, the Union filed a motion to clarify certification, in which it seeks to have included within the certified unit all gravure services department employees who do not come within the specific exclusions set forth in the unit description. The Employer filed a motion to dismiss, alleging that the employees in the gravure services department, who had been transferred from classifications within the bargaining unit, are engaged in work which is properly outside the unit. On January 29, 1963, the Board issued an order referring the proceeding to the Regional Director for the Ninth Region for the purpose of conducting a hearing on the issues raised by the parties. Thereafter, on February 21, 1963, a hearing was held before Mark Fox, 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 Act, the Board has delegated its powers herein to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

¹The name of the Employer at the time of the Union's certification was The Formica Co.

The Employer manufactures laminated plastic. The current bargaining agreement between the Employer and the Union describes the unit, in the terms of the certification, as all production and maintenance employees with certain specific inclusions and exclusions which are not relevant in this proceeding. The issue raised by the motion to clarify the certification arises from the Employer's transfer of three employees from process engineering to gravure services, and its contention that the work they now perform requires their exclusion from the certified unit as technical or creative employees.

Gravure services was newly established in March 1960. It consists at present of two supervisors, Yoder and Gene Emily, and the three nonsupervisory employees, Schwier, Reynolds, and Peters who were classified, before their transfer, as laboratory assistants in process engineering, within the coverage of the unit.² Among the functions assigned to gravure services is the production of laminated plastic samples for the sales department which match, in color, material submitted by customers. This work is performed by Schwier, Reynolds, and Peters, and consists in mixing pigments, extenders, and solvents to produce printing inks which match the colors of the pattern being duplicated. They use the inks to print impressions on paper which is then laminated to a plastic sheet. With one difference, the work now done in the color-matching section of gravure services was done by these same individuals when they worked in process engineering. Previously, Reynolds and Peters were given explicit instructions as to how the inks were to be formulated, whereas in their present jobs they decide for themselves how to achieve a suitable color match. Schwier, however, had apparently been permitted to exercise such discretion even before his transfer to gravure services. According to the Employer, it is the responsibility of mixing inks without close supervision that removes the work of these three employees from the bargaining unit.

The employees have not taken any academic or technical courses to qualify them for this new responsibility of mixing inks and matching colors. Their skills have been obtained on the job through experience, observation, and the advice of supervisors. The work is performed in the same general area of the plant where they formerly worked and they continue to use some equipment located in the process engineering department. They were formerly compensated on an hourly basis, but since their transfer, are paid a monthly salary, earning about \$10 more per week than they did at their old rates.

² Schwier was unilaterally removed from the unit by the Employer when it assigned him in August 1960 to gravure services. The Union raised no objection at that time because it considered him to be a supervisor. Reynolds and Peters were transferred in July 1962, at which time the Union protested their removal from the unit. At the hearing, the Employer stated that Schwier was not a supervisor, that he had the same duties and responsibilities as Reynolds and Peters, and that there are no reasons for treating him differently from the other employees in gravure services.

We agree with the Union that the changes in the duties and responsibilities of these three employees do not warrant their removal from the unit. Matching colors requires only visual acuity, while mixing inks to obtain a satisfactory match does not, in our opinion, require the kind of judgment and specialized training which qualifies one as a technical employee.³ In fact, under the circumstances present here, we are convinced that their interests and working conditions have not been changed substantially in the jobs they now have. Other arguments made by the Employer for their exclusion, namely, that their work is creative or that they fulfill a management responsibility in achieving color matches, are without merit. We, therefore, find that work of the nature now performed by Schwier, Reynolds, and Peters in the gravure services department is within the certified unit.

ORDER

IT IS HEREBY ORDERED that the Union's motion to clarify its certification in Case No. 9-RM-46 be granted so as to include within the production and maintenance unit the color matching and ink formulation work of the gravure services department.

³ *Litton Industries of Maryland, Incorporated*, 125 NLRB 722.

Robert M. Matthews, d/b/a Matthews Construction Company and Eastern Iowa District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America. Case No. AO-56. May 2, 1963

ADVISORY OPINION

This is a petition filed on behalf of the Eastern Iowa District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, herein called the Petitioner, by Ellis Howern, Petitioner's business agent, for an Advisory Opinion in conformity with Section 102.98 and 102.99 of the Board's Rules and Regulations, Series 8, as amended. Thereafter, on April 11, 1963, Robert Matthews, d/b/a Matthews Construction Company, herein called the Employer or primary employer, filed a response to petition for Advisory Opinion.

In pertinent part, the petition, response, and attachments thereto allege as follows:

1. The Petitioner is a party defendant to an injunction proceeding in the Twentieth Judicial District Court of Iowa, Des Moines County, Burlington, Iowa, Docket No. 13761 filed by the Employer seeking to enjoin the Petitioner from picketing the construction site where the