

## CONCLUSIONS OF LAW

1. Hayes Freight Lines, Inc., Winston-Salem, North Carolina, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers of America, Ind., is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act have not been sustained.

## RECOMMENDATION

It is recommended that the complaint be dismissed in its entirety.

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**American Hard Rubber Company, a Division of Amerace Corporation and Independent Hard Rubber Pipefitters and Independent Hard Rubber Tool & Die Workers and Machinists and Independent Hard Rubber Millwrights and Independent Hard Rubber Carpenters and Independent Hard Rubber Electricians, Petitioners.** *Cases Nos. 8-RC-4540, 8-RC-4541, 8-RC-4542, 8-RC-4543, and 8-RC-4544. June 7, 1963*

## DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Bernard Levine, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent employees of the Employer.<sup>1</sup>
3. For the following reasons we find that no questions exist concerning the representation of employees of the Employer.

The Intervenor has represented the production and maintenance employees of the Employer since 1936.<sup>2</sup> The Petitioners seek to sever from that unit five units of alleged craftsmen who work in the Employer's maintenance department. We deny the requests because, in

<sup>1</sup> Local No. 15, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, herein called the Intervenor, was permitted to intervene at the hearing.

The record indicates that the separate Petitioners herein were established after the Board's unpublished decision in an earlier proceeding involving this Employer (Case No. 8-RC-3538, December 21, 1959). They exist for the purpose of dealing with the Employer concerning the wages, hours, and terms and conditions of employment of the types of employees stated in their names. We find that they are labor organizations within the meaning of the Act.

<sup>2</sup> Prior to 1950 this unit included powerhouse employees who, since then, have been represented by Local 821, Operating Engineers. In 1957 the Employer became, as it now is, a division of Amerace Corporation, but this did not change the representation of the employees.

our view, the record supports a finding that none of the proposed groups—which are sufficiently described by the names of the respective Petitioners—is a true craft.

The employees sought are all under the supervision of the maintenance foreman; there are no separate supervisors for each group. Each group has a separate work station. They work without much supervision and have separate seniority for layoff and recall. There is cross-bidding for jobs and there have been transfers into these groups from other parts of the plant.

We note first that there is no apprenticeship program for any of these employees at this time. In 1946 there was such a program for machinists only, but it has not been in effect for some time, and only one machinist completed it. There is no other formalized training program. New employees are hired as trainees or probationary employees and advance to the A rate (at which all the present employees are classified) as they are deemed qualified. There is no fixed period for such advancement but employees have reached the top rate in as little as 6 or 7 months.

This suggests that the work of these employees does not embrace the full gamut of craft skills, and the record so shows. Thus, all dies are neither made nor repaired by the tool and die makers; such repair work is sent out. The plant manager testified that the machinists could not handle work to sufficiently close tolerances, so that some of their work had to be sent out as well. The Employer also sends out all armature rewinding work rather than having it done by the electricians. There has also been an instance where outside help had to be summoned to handle an electrical breakdown the electricians were unable to remedy. Similarly, the Employer's refrigeration work is sub-contracted rather than done by the pipefitters.

None of these factors is to be considered in isolation. Combining the absence of apprenticeship, the relatively short time in which employees have reached the A rate, and the number of tasks which the Employer has performed elsewhere, we are satisfied that the employees sought by the Petitioners are not true craftsmen. Accordingly, we shall dismiss the petitions.<sup>3</sup>

[The Board dismissed the petitions.]

**MEMBERS RODGERS and LEEDOM, dissenting:**

The Petitioners herein, five independent unions, are seeking to sever five separate groups of skilled employees<sup>4</sup> from an established production and maintenance unit, which the Intervenor has represented since

<sup>3</sup> In view of this finding, we do not pass upon the other contentions advanced by the Employer and the Intervenor.

<sup>4</sup> The five groups of employees are pipefitters, machinists and tool and die makers, millwrights, carpenters, and electricians.

1936. Our colleagues have, in our view, improperly found that the employees sought are not "true craftsmen," and that the petitions should, therefore, be dismissed. We disagree with our colleagues and believe that their decision is contrary to the principles set forth in the lead *American Potash* case.<sup>5</sup>

Each of the groups sought is a distinct and homogeneous grouping of skilled craftsmen and clearly satisfies the standards of *American Potash*. Thus, each group: (1) has a separate room or "shop" where the employees perform most of their work; (2) performs only "trade" work, and no other employees do such work; (3) performs the work generally done by such crafts and uses the tools generally associated with such work; (4) had separate supervision, until recently, when all the groups were placed under the supervision of a mechanical or maintenance foreman; (5) does not interchange employees with the other craft groups or with the production and other maintenance employees; and (6) has separate seniority for purposes of layoff and recall with no bumping into any of the other groups.

Our colleagues base their contrary conclusion on the facts that (1) there is no apprenticeship program *at the present time*; (2) a *very few* employees have advanced to the A rate in a relatively short time; and (3) some work, which craftsmen in these trades may be qualified to perform, is subcontracted out by the Employer. Yet, with respect to the lack of a "formalized" apprenticeship program "at this time," and the period of time in which a few of the employees reached the A rate, the record shows that the Employer formerly had an apprenticeship program which consisted of on-the-job training under an experienced senior employee for a period of approximately 2 to 4 years. During this time, an employee would advance from a trainee or

<sup>5</sup> *American Potash & Chemical Corporation*, 107 NLRB 1418.

<sup>6</sup> The electricians work with die, site cutters, hook-on ammeters, megors, volt meters, and high grounders; read blueprints; maintain electric trucks, electric motors, and electric control instruments, and install the wiring necessary to operate new pieces of electrical equipment.

The pipefitters work with 6- to 60-inch pipe wrenches, pipe-threading machines, pipe-cutting machines, bends, flanging tools, and grinders; read blueprints; and install, maintain, and repair all pipelines used to convey hydraulic, steam, and air pressure to power a variety of machines such as pumps, pressers, etc. These pipelines range in size from 1/8-inch tubing to 24-inch pipe, and carry pressures ranging from a vacuum to 2,000 pounds hydraulic pressure, 4,000 pounds steam pressure, and 90 pounds air pressure.

The millwrights install, set up, disassemble, move, and maintain heavy machinery and mechanical equipment in the plant, and use the tools generally used by those performing such work.

The machinists and tool and die workers make bearings and fit them; change armatures and crank shafts; cut threads; face valves; read blueprints; make switches; make replacement parts; repair parts for the Employer's production machines; repair molds, work on cutting tools and jigs or dies; and use tools such as scales, calipers, micrometers, bevels, protractors, edges, and verniers.

The carpenters make packing boxes; construct partitioned offices; do cabinet work; perform general repair work on doors, window frames, etc.; use the tools generally used by journeymen carpenters, such as handsaws, powersaws, joiners, drill presses, planes, squares, and levels; and make drawings and sketches of their work.

apprentice to a class C craftsman, class B craftsman, and finally, when the maintenance foreman judged the employee to be sufficiently skilled, experienced, and competent, to a class A craftsman. All the employees sought to be represented herein went through this apprenticeship program and ultimately attained their present class A status.<sup>7</sup> Although this program was not a "formal" one, in the sense that it was not "approved" by an agency of the State or Federal Government,<sup>8</sup> the fact remains that it was a training program for the purpose of giving these employees the high degree of skill and the experience necessary to enable them to perform their assigned duties, and that these employees did serve such an apprenticeship.<sup>9</sup> Moreover, this program is not in use at the present time only because the Employer has been able to stabilize employment in the craft groups, and has no further need to maintain such a program.

It is significant, too, that the Intervenor admits that these employees are "skilled tradesmen," and that the Employer and the Intervenor, in their most recent contract, refer to the groups sought as "crafts." Furthermore, the Intervenor, conscious of the superior skills and separate interests of such employees, has established a special program under which the employees herein may become "journeymen." In addition, granting that the Employer sends certain work out, this factor cannot be determinative,<sup>10</sup> in the face of a record which so clearly establishes the craft skills of the employees in question.

In view of all the above, we would find the employees involved are craftsmen who, consistent with long-established Board policy, are entitled to separate representation if they so desire, and we would therefore direct elections in the units sought by the Petitioners.

<sup>7</sup> It is quite true, as our colleagues have noted, that several employees reached the class A rate in less than the usual time required for such advancement. However, the record shows that an undisclosed number of these employees had had prior experience, thus accounting for their rapid rise to the top rate. In any event, considering all the matters set forth herein, we do not regard this fact as controlling.

<sup>8</sup> Formerly, the Employer had such a program, approved by the State of Ohio, for the machinists in its employ

<sup>9</sup> In *American Potash & Chemical Corporation, supra*, the Board laid down the following rule: "To be a 'journeyman craftsman' an individual must have a kind and degree of skill which is normally acquired only by undergoing a *substantial period of apprenticeship or comparable training*" [Emphasis supplied.] Moreover, the Board went on to state that it would recognize an "experience equivalent" in lieu of an apprenticeship, thereby indicating that an apprenticeship is not a *sine qua non* of craft status. To the same effect. *Mendon Company*, 108 NLRB 310; *Montgomery Ward & Company*, 110 NLRB 256, 259-260; *The Vendo Company*, 110 NLRB 807, 811; *Hughes Aircraft Company*, 115 NLRB 504, 506-507; *Phillips Petroleum Co.*, 122 NLRB 1348, 1349; *Diamond T. Utah, Inc.*, 124 NLRB 966; *E. I. du Pont de Nemours and Company*, 126 NLRB 885, 886-888. *Mallinckrodt Chemical Works*, 129 NLRB 312, 314-315; *B. H. Hadley, Inc.*, 130 NLRB 1622; *William E. Locke, et al., d/b/a Dinuba Sentinel*, 137 NLRB 1610.

<sup>10</sup> The record, in most instances, fails to indicate whether the Employer sends the work out because his employees are unable to do the work or whether he chooses to subcontract out the work for some other reason, such as the small size of the craft groups, or the time and equipment required to perform the work. For example, Darius Denning, an electrician, testified that he knew how to rewind armatures for electric motors and had 6 years' experience in this work, yet the Employer subcontracts this work.