

quests are frequently honored. The Employer testified concerning the progression of 29 mail employees from irradiation processing; 17 of these taking "clerical" positions<sup>2</sup> and 12 taking other types of work such as drafting, laboratory analysis, and patrolling.

Apart from driving in order to distribute mail, the mail-handling functions of these employees, as well as the additional clerical functions they perform, are similar to those of office clerical employees. They share the same wage basis and the same hours, and many of them have the same supervision and progression pattern. Appropriately all these mail-handling employees would be included in an office clerical unit unless the fact that they do some driving in connection with the work sets them apart. Customarily the Board has not found appropriate a unit limited to a segment of the office clerical employees, even though, unlike here, the grouping sought was based on an administrative or functional division.<sup>3</sup> With respect to their driving duties we note that only the five area delivery motor messengers, who drive the long runs, spend the majority of their time in driving. The 16 motor messengers, who do exactly the same sort of work but have regular short runs, apparently spend less than half their time driving, 40 percent of their time being devoted to clerical work not involving mail handling. Most of the remaining employees sought drive only occasionally.

In these circumstances we think that the driving function of some employees in the requested unit is not such as to set the whole requested unit apart from other office clerical employees, in the manner, for example, that truckdrivers may be considered to have interests distinct from production and maintenance employees.<sup>4</sup> Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

<sup>2</sup> Whether these were office or plant clerical positions does not appear

<sup>3</sup> *Solar Aircraft Company*, 116 NLRB 200, 202; *Detroit Marine Terminals, Inc.*, 115 NLRB 822, 824. See also *E I Du Pont De Nemours & Company, Inc., Construction Division, Savannah River Plant*, 107 NLRB 734, 745-747.

<sup>4</sup> See *E H. Koester Bakery Co., Inc.*, 136 NLRB 1006, 1008.

**Wheeling Electric Company and Utility Workers Organizing Committee, CIO, Petitioner.** *Case No. 6-R-809. September 3, 1964*

#### DECISION AND ORDER CLARIFYING CERTIFICATION

On March 9, 1964, Utility Workers Union of America, AFL-CIO, Local No. 264, filed a motion for clarification of the certification issued to its predecessor, Utility Workers Organizing Committee, CIO, on 148 NLRB No. 87.

October 12, 1943, in the above case. An opposition to the motion was then filed by the Employer. Upon considering the matter, the Board was of the opinion that the issues raised by the parties could best be resolved after a hearing, and it therefore referred the proceeding to the Regional Director for Region 6 for such purpose. A hearing was thereafter held before Hearing Officer Frank H. Parlier. His 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 in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Jenkins].

Upon the entire record in this case, the Board finds:

The Employer is an electric utility serving an area of approximately 300 square miles in West Virginia. The Union was certified in 1943 for the following unit:

All employees who are commonly known as outside men, being those in the construction, maintenance, distribution, and meter departments (outside men only); also power house employees and substation employees and below the rank of foreman, excluding also clerical and office workers . . . and all supervisory employees.

The recognition clause of the current contract embodies the definition of the unit set out above, and thereafter provides that it is the agreement of the parties that when a union member is promoted to a supervisory position, he will cease to be represented by the Union, except that an employee who is temporarily occupying a supervisory position remains within the unit.

The issue raised by the Union's request for clarification is whether the position of working foreman in the transmission and distribution department is a supervisory one. The department employs approximately 50 clerical and physical employees under the supervision of a general foreman. There are five construction and maintenance crews, two of which are supervised by foremen who are concededly outside the coverage of the contract. They each supervise five employees full time, doing no physical work at all. These two foremen are salaried and exempt from wage-hour coverage. The other three crews each include a working foreman (the classification in dispute here) and two other employees, a lineman and a truckdriver. The working foremen spend most of their time in physical work with the other members of their crew. They are hourly paid, receiving 20 cents per hour more than the highest paid nonsupervisory employee in the department. Figured on a monthly basis, they earn slightly less than the midpoint of the salary range established for the exempt foremen. The

working foremen are subject to wage-hour regulation because the percentage of their time spent in physical work exceeds the limitation imposed by that act.

Prior to 1959, four of the five construction crews were each supervised by an exempt foreman in charge of the traditional five- or six-man crew. The fifth crew was smaller and was headed by an employee named Fox who had been a lineman. Because of his physical incapacity Fox had been given lighter work and was thereafter classified as a dual-rated employee, lineman A-temporary working foreman. Under the contract he was entitled to a foreman's rate of pay, but as a temporary foreman he remained within the unit. When Fox retired at the end of 1958, the Employer decided to retain the smaller crew because it felt that, with new medium sized trucks having digging equipment which gave them almost the same capability as its larger trucks, it could dispense with the five-man crews for smaller jobs. It thereupon promoted Castilow, a lineman A, to the newly established classification of permanent working foreman, after first advising the Union that the new classification was a supervisory one, excluded from the bargaining unit. Castilow's name was then removed from the seniority list, and the Employer ceased to check off and remit his dues to the Union, as it had formerly done pursuant to the contract. The Union did not protest these actions.

During 1963, 4 years after Castilow's promotion to working foreman, two of the exempt, salaried foremen retired. In March of that year, Miller, a lineman A, was promoted to working foreman as a replacement for the first of the retired foremen, without protest by the Union. However, when the Employer promoted Nickerson to replace the second of the retiring foremen in January 1964, the Union protested and filed a grievance alleging that the working foreman classification should be included in the bargaining unit. When the grievance was denied, the Union sought arbitration which the Employer declined on the ground that the dispute was not subject to arbitration because it involved a classification outside the coverage of the contract. The Union thereupon filed its request for clarification of the certified unit with the Board, alleging that the attempted removal of working foreman from the coverage of the contract was improper because the individuals in that classification were not supervisors, and because the contract contemplated their inclusion within the unit and their representation by the Union.

To support its contention that the Employer has considered working foremen as nonsupervisory employees under the current and past agreements, the Union refers to two documents prepared by the Employer, a job classification and a wage schedule, both of which list the working foreman classification among the nonexempt physical jobs

which the Union represents. The Employer, however, contends that the job classification and the wage schedule refer to working foremen only because the agreement provides that employees temporarily promoted to a supervisory position continue to be represented by the Union during such temporary duty, and that the Union is entitled to information concerning the duties and premium rates of any covered employee who is temporarily assigned as a replacement for either an exempt or a working foreman. The Employer also points out that it does not bargain with the Union with respect to the job duties or the premium rate of permanent working foremen, and that its promotional and organizational chart, indicating the line of progression for jobs within the unit, does not list either the foreman or the working foreman classification. The Employer's explanations satisfy us that no inference can be drawn from the conduct of the parties or from the contract itself, that the inclusion of working foremen in the certified unit was within the contemplation of the parties.

This brings us then to the question whether the duties and responsibilities of the working foremen require their exclusion from the certified unit as supervisors. As noted above, prior to 1959, four of the five construction crews in the transmission and distribution department were headed by foremen who were admittedly supervisors. At the present time, there are two crews headed by foremen, each of whom supervises five employees engaged in physical work. The other three construction crews each contain three employees engaged in the same type of work as the larger crews, although, because of their smaller size, the individual in charge is able to spend most of his time in physical work.

Each of the five crews normally receives its assignment in the morning at company headquarters and then proceeds to the designated site. The working foremen review the orders with their crews and make the necessary assignments in the same manner as the exempt foremen do with their crews. Although the review and assignments may be perfunctory and routine because each crewmember knows from past experience what part of the job he is expected to complete, some discretion is exercised by the head of the crew whenever unexpected contingencies arise. In such matters as securing additional help or granting time off to crewmembers, it is the working foreman who makes the initial decision. Working foremen attend all meetings of supervisors, and have been advised that they are to follow a manual entitled "Procedure for Corrective Discipline," which has been issued to supervisors. The manual authorizes supervisors to issue warning notices, to suspend employees, and to initiate discharges. Although no working foreman has initiated any disciplinary action against a crewmember since the issuance of the manual, this is also true of the exempt fore-

men. On the only two occasions when a working foreman has requested the removal of an employee from his crew, the requests were granted.

As there appears to be no difference between the authority and responsibility exercised by the foremen and that exercised by the working foremen, other than what may be attributable to the size of their crews, we find that the status of the working foremen is not significantly distinguishable from the status of the exempt foremen. As the latter are excluded from the certified unit as supervisors, we see no reason why the former should not also be excluded.

[The Board clarified the certification issued herein on October 12, 1943, by specifying that working foremen in the transmission and distribution department are excluded from the unit as supervisors.]

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**Edward G. Partin, Business Agent, General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind. [Ryder Truck Lines, Inc.] and Calvin C. Clary. Case No. 15-CB-622. September 4, 1964**

#### DECISION AND ORDER

On April 30, 1964, Trial Examiner George A. Downing issued his Decision 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 attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to portions of the Trial Examiner's Decision, and the General Counsel filed a brief in answer thereto.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the General Counsel's brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.