

**American Machine & Foundry Company (Hydrospace Division)**<sup>1</sup>  
**and District Lodge 76 of the International Association of Ma-**  
**chinists, AFL-CIO,**<sup>2</sup> **Petitioner.** *Cases Nos. 3-RC-368 and*  
*3-RC-719. May 12, 1965.*

### SUPPLEMENTAL DECISION AND ORDER

On December 13, 1949, in Case No. 3-RC-368, the National Labor Relations Board certified District Lodge 76 of the International Association of Machinists, as the collective-bargaining representative for a unit of office and clerical employees at the Employer's plant at Cheektowaga, New York, including timekeepers, practical nurses, and methods planners, but excluding engineering employees, estimators, tool design employees, and all production and maintenance employees; and on August 14, 1951, in Case No. 3-RC-719, certified District Lodge 630, International Association of Machinists, AFL-CIO, as the bargaining representative for a unit of tool designers, estimators, time-study employees, and secretaries employed at the same plant, excluding all other employees whose duties are outside the office factory, such as tool expeditors. Since the 1951 certification, the parties have in all respects treated and regarded the two units as a single merged unit. Subsequently, District Lodge 76 has emerged as the bargaining representative of the merged unit. The most recent contract between the parties was executed in 1962, with a terminal date of May 1, 1965.

On November 12, 1963, District Lodge 76 of the International Association of Machinists, AFL-CIO, herein called Union, filed a motion to clarify bargaining unit in which it seeks to include in the bargaining unit 31 employees who work in various departments. The Union contends that administrative changes unilaterally effectuated by the Employer since the certifications have altered the departmental arrangements at the Cheektowaga plant. On December 2, 1963, the Employer filed opposition to the motion.

On December 20, 1963, the Board issued an order referring the matter to the Regional Director for Region 3, and directing that a hearing be held for the purpose of taking testimony on the issues raised by the motion and the Employer's opposition thereto. A hearing was held on January 9 and 10, February 11, 12, 27, and 28, and March 16, 1964, before Hearing Officer Henry J. Winters. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed. Thereafter, the Employer and the Union filed briefs.

<sup>1</sup> Name as amended at the hearing.

<sup>2</sup> Name as amended at the hearing.

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 case to a three-member panel [Members Fanning, Brown, and Jenkins].

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

*Engineering department employees:* The Union seeks to add to the unit 12 employees who work in product engineering, a principal subdivision of the engineering department. They consist of a secretary to the director of engineering, two clerk stenographers, four engineering aides A, two engineering aides B, and three blueprint machine operators. The record shows that the engineering department was in existence at the time of the 1949 election. Although there were office and clerical employees in this department, they did not vote in the 1949 election. In fact, "engineering employees" were specifically excluded from the unit and did not vote in the 1951 election. Thus, it appears that employees in the engineering department have been historically excluded from the unit.

Three of the employees whom the Union seeks to add to the unit work in the program control room. They include an engineering aide A, an engineering aide B, and a clerk-stenographer. The program control room was set up in the fall of 1962 for the purpose of centralizing all of the program control and reporting work. The record shows that the work up to this change was not only performed by employees in the engineering department, but also, that the staffing of the program control center was from employees in the engineering department. On the basis of the foregoing, it appears that the work now being done in the estimating and pricing is work which has always been done by employees in the engineering department, a group which has been historically excluded from the unit.

*Contracts department employees:* The Union seeks to include four employees in estimating and pricing, which is a subdepartment of the contracts department. They consist of two engineering aides B, an engineering aide A, and a secretary to the head of estimating and pricing. The record shows that estimating and pricing was organized about January 1961. Prior to that time, the estimating function was performed by bargaining unit employees and it still is. However, the pricing function has always been done by engineering aides and related employees. Thus, it appears that the pricing work now being done in estimating and pricing is work which has always been done by employees who have been historically excluded from the unit.

*Contracts department and manufacturing sales department employees:* The Union seeks to add to the bargaining unit two secretaries in the contracts department and one secretary in the manufacturing sales department. The contracts department and sales department were originally a single combined department, known as the contract and

sales department, and continued as one department for some time until a separate sales staff was organized at the Cheektowaga plant, known as the manufacturing sales plant. The record shows that there were secretaries and other clerical personnel working in the old contracts and sales department prior to the 1951 election, but who were not included on the list of eligible voters and who did not vote in that election. It appears that the work now being performed by the three employees sought to be added is work which has always been done by employees who have been historically excluded from the unit.

*Industrial relations department employees:* The Union seeks to add to the unit three employees who work in the industrial relations department. They include two senior clerks and a secretary. The industrial relations department, like the engineering department and the contracts and sales department, antedates the 1951 election. The record shows that the industrial relations department, which was formerly known as the personnel department, had office and clerical employees working at the time of, but who did not vote in, the 1951 election. It appears that the work now being performed by the employees sought to be added in the industrial relations department is work which has always been done by employees who have been historically excluded from the unit.

*Data processing department employees:* The Union seeks to add three systems analysts to the bargaining unit. At the hearing, the Union claimed that the systems analysts were performing the work of a programmer, which is a unit classification. The record shows that in late August and early September 1960, three men were hired to work on setting up the control systems for a new computer. When they were hired, they were classified as programmers. However, at the time they were hired, the Employer was not sure of just what the requirements would be for the men to work on the new computer. Accordingly, for about 30 days in September and October 1960, the Employer and the Union discussed the classifications which would be required to man the new computer. When the Union refused to accept the Employer's proposal that the three employees work outside the unit, the Employer decided to and did cancel its order for the new computer. Consequently, the Employer on October 7, 1960, terminated the three employees who had been hired as programmers. However, on October 23, 1960, the Employer and the Union finally reached an agreement on this problem, which was embodied in a memorandum between the parties that placed these employees outside the unit. On November 7, 1960, the Employer rehired as systems analysts the same three men who had been hired and terminated previously as programmers. The record further shows that the systems analysts are not now performing the duties of a programmer. Thus, it appears that the systems analysts are not performing work within the unit.

*Systems and procedure department employees:* The Union also seeks to add three employees who work in the systems and procedures department. They include a secretary, an employee referred to in the record as "one clerk who writes and develops management systems," and a receptionist. With respect to the first two employees, the record contains very little evidence about the appropriateness of their inclusion in the unit. The secretary was not mentioned at the hearing until the last minutes of the final day of hearing when the Union amended its motion by adding her to the list of employees which it seeks to add to the unit. The record does not in any way indicate the nature of her duties, which the Employer suggests could be of a confidential nature. As for the clerk, the only information that appears in the record concerning that employee is a single reference by one of the witnesses to "a man who writes and develops management systems." The Employer maintains that he is a managerial employee.

The record shows that a nonunit receptionist classification was set up in 1957 when the Employer established a communications center on the second level of the administration building where the receptionist still works. The employee who became the receptionist at that time had, until then, been a bargaining unit employee. Nevertheless, the Union made no objection to her removal from the unit. In fact, the Union expressly acquiesced in the change of her status from unit to nonunit. The Union had not made any effort to represent this employee prior to the present proceeding.

Under all the circumstances, including their historical exclusion from bargaining representation, we find that the 25 employees in the engineering, controls, and industrial relations departments may not be added to the existing unit by way of a motion for clarification.<sup>3</sup> Further, in view of the prior agreements between the Union and the Employer concerning the exclusions of the three systems analysts in the data processing department and the receptionist in the systems and procedures department, we find that they cannot be included in the bargaining unit by this motion to clarify. Also, in view of the absence of record testimony concerning the duties of the secretary and the "one clerk who writes and develops management systems," we are unable to determine whether they are properly includable as an accretion to the bargaining unit.

Accordingly, the Board having duly considered the matter, it is hereby ordered that the Union's motion to clarify the bargaining unit by including therein the aforementioned 31 employees, be, and it hereby is, denied.

<sup>3</sup> *General Electric Company*, 144 NLRB 88. In view of this disposition, we do not pass upon the Employer's other objections to the inclusion of certain of the employees in the existing unit.