

stances surrounding the discharge are not entirely free of suspicion. Thus, it is not without significance that Respondent made its decision to terminate Bolton without first obtaining Bolton's version of the Smith incident and, indeed, withholding Smith's identity as the one induced in the slowdown; on the other hand, it may be that Respondent's conduct in this respect was motivated by a desire to shield Smith against possible reprisal by Bolton. Furthermore, Respondent retained in its employ other employees (e.g., Allen and Peace) whom it suspected of slowdowns, although it is true (as Respondent claims) that none of them were also suspected of inducing other employees to curtail production, as was Bolton. Moreover, it may be that Respondent "simply wanted to make an 'example' of [Bolton] in order to stop the slowdown, and apparently felt that it was unnecessary to discharge [other employees] to accomplish that purpose." *California Cotton Cooperative, supra*, 1496.

In any event, I have given weight to the countervailing factors supporting a finding of discrimination and I find, on the basis of the whole record, that these are counterbalanced by the factors supporting a contrary finding, including the circumstance (already found) that Respondent's defense was not a concocted one. There is no evidence of union animus on the part of Respondent at the plant here involved. The record shows that until the recent incidents, Respondent had had long and amicable relations with the Union extending over at least 10 years, during 6 of which Bolton was union president. The parties have periodically signed collective agreements, at least the last two with union shop and dues checkoff. There is no claim, let alone evidence, that Respondent had at any time previously taken reprisal against any employee for processing grievances or protesting wage rates—the protected activities of Bolton claimed by General Counsel to have motivated the discharge. From all that appears, these activities were normal, everyday occurrences to which Respondent willingly submitted in accordance with its contractual commitments. While it may be (as Bolton testified Company officials had told him, *supra*, footnote 19), that Respondent resented his filing of charges against two union members (Bacon and Van Auken), I am satisfied that such resentment, even if established, was not a substantial factor in Respondent's decision to terminate Bolton, particularly since Respondent took no action against Bolton until after the Smith incident—long after the charges were filed. Cf. *Softtexture Yarns, Inc.*, 128 NLRB 764, 766.

For all of the reasons stated and on the basis of the entire record, I find and conclude that General Counsel has failed to meet his burden of establishing by a preponderance of the credible evidence that Respondent's termination of Bolton on May 22 was discriminatorily motivated, in violation of Section 8(a)(1) and (3) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings and upon the entire record in this case, it is recommended that the complaint be dismissed.

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**Worthington Corporation, Compressor and Engine Division<sup>1</sup> and Office Employees International Union, Local No. 212, AFL-CIO, Petitioner.<sup>2</sup> Case No. 3-UC-1. October 13, 1965**

#### DECISION AND ORDER

Upon a Petition for Clarification duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Jeremy V. Cohen. All parties appeared and were given full opportunity to participate at the hearing. Thereafter, the Employer and the Petitioner filed briefs in support of their respective positions.

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

The National Labor Relations Board has considered the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings 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 [Members Fanning, Brown, and Jenkins].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.<sup>3</sup>

3. In its petition for clarification the Petitioner seeks to include as an accretion to its certified unit three systems and procedures analysts (Chavanne, Blyth, and Wittig), and two assistants, electronic data processing, and planning (Moretti and Turner). The Employer, contrary to the Petitioner, contends that these employees are professional, or at least technical employees who do not have a community of interest with the employees in the bargaining unit; that Moretti and Turner are supervisors within the meaning of the Act; and that, in any event, a self-determination election is the proper procedure to be followed in this case.

On January 16, 1951, in Case No. 3-RC-556, pursuant to a consent election agreement, the Petitioner was certified in the following unit:

All office clerical and technical employees, including inspectors, checkers, stock checkers, or dispatchers, time study and department employees, office custodial employees and switchboard operators; excluding confidential secretaries, executives, managerial employees, nurses, and all guards, professional employees, and supervisors as defined in the Act.

On April 22, 1953, in Case No. 3-RD-67, pursuant to a Decision and Direction of Election by the Board, the Petitioner was decertified in a unit composed of:

All engineering and technical employees, subdivision engineers, electrical section leader, manager of emergency procurement, purchasing assistants, research engineers, junior engineers, designers or design draftsmen, detail draftsmen, drafting apprentices, test inspectors, specification clerks, tracers, executive clerks, bulletin composition employees, and blueprint machine operators; but excluding the purchasing department leader, lead specification typist, typist clerks, blueprint clerks, stenographer clerks, file clerks, all other office clerical employees, inspectors, time study and standard department employees, production and maintenance employees, guards, watchmen, and supervisors as defined in the Act.

<sup>3</sup> The Petitioner's request for oral argument is hereby denied as, in our opinion, the record, including the briefs, adequately presents the issues and positions of the parties.

The classifications included in the decertification unit, although not included in the certified unit, were apparently placed in that unit by mutual agreement of the parties, during the first contract negotiations following certification. The result of the decertification procedure was to remove such employees or classifications from the scope of the certified unit.

Since the decertification proceeding, the recognition clauses in subsequent contracts, including the agreement in effect at the time of the hearing, describe the unit substantially as follows:

All office, clerical, and technical employees, including inspectors, checkers, stock chasers or dispatchers, time study and standard department employees, office custodial employees, and switchboard operators; but excepting confidential employees, executives, managerial employees, nurses, guards, technical, engineering, professional employees, and supervisors in accordance with certification Case No. 3-RC-556, dated January 16, 1951 and Case No. 3-RD-67, dated April 22, 1953. Employees coming under the jurisdiction of United Steelworkers of America [production and maintenance employees] and Patternmakers League of North America [pattern department] are excluded from the provisions of this agreement.

For many years, the Employer operated many "unit record machines," such as tabulators, sorters, verifiers, calculators, reproducing machines, keypunch machines, and simple machines. These machines were located in the tabulating department and the 10 or 11 tabulating department employees, excluding supervisor Guasteferro, were included in the Petitioner's bargaining unit. In the tabulating department, 85 percent of the work related to accounting, that is, inventory, production, and purchases control operations, and to the computation on incentive rates. The remaining 15 percent of the work related to traffic control, shipping reports, and other matters.

About January 1963, the Employer decided to install an IBM 1440 computer. Thereafter, the Employer created the electronic data processing methods and planning department, herein referred to as the EDP department. The tabulating department was completely absorbed by the EDP department and Guasteferro continued as supervisor of the new department. Turner, who had been tabroom group leader in the tabulating department, was removed from the bargaining unit and reclassified as an assistant, electronic data processing and planning. Until the installation of the computer about June or July 1964, the EDP department functioned with the older record machines. Upon the actual installation of the 1440 computer, some of the tabulating department equipment was immediately removed. It is contemplated that eventually all operations previously performed by the tabulating department employees will be computerized.

There are approximately 13 employees in the EDP department in the Petitioner's unit, including 1440 console operators and keypunch operators. The console operator classification was created in June or July 1964, following the installation of the 1440 computer and the employees serving in this capacity have been included in the unit represented by the Petitioner.

With respect to Turner and Moretti, classified as assistants, electronic data processing and planning, the record shows that both work in the enclosed EDP office with Guasteferro.<sup>4</sup>

Turner, as previously noted, served as tabulating room group leader until he was reclassified to his present classification and transferred to the EDP department. Moretti, who was previously a specifications clerk in the parts service department, a classification not in the bargaining unit, was transferred into the EDP department in October 1964. Turner and Moretti are high school graduates, and Turner has had 2 years of college, including 1 year of accounting plus a night school course in computer statistics, while Moretti has taken courses at Erie County Technical Institute, and both men have taken IBM computer courses and have received on-the-job computer training.

The assistants, electronic data processing and planning, direct and coordinate all phases of tabulating or data processing work required to accomplish complex specific jobs on established systems, and they assist in establishing new systems for application of tabulating or data processing techniques; plan proper procedures such as writing of operating instructions, stored program coding, making flow charts, designing forms, and preparing setup diagrams. They are responsible for control panel wiring for nonstandard runs; check and review work for accuracy and completions and make test runs. It appears that in preparing and adopting new programs for computer application they are required to use their own initiative and independent judgment.

The record shows that the electronic data processing and planning assistants monthly salary ranges from \$641.25 to \$774.75. The highest weekly salary grade in the bargaining unit, at labor grade 12, on a monthly basis, begins at \$598 and has a high of \$671.67.

Chavanne, a systems and procedures analyst, who is supervised by the comptroller, Mathes, performs work in the same area as Moretti, Turner, and Guasteferro, in the EDP office. He has been temporarily assigned to the 1440 computer program but is primarily engaged in systems and procedures work unrelated to the 1440 computer. At the present time his work involves devising new applications for the use of the 1440 computer in all areas of the plant, whereas the others here in

<sup>4</sup>The record further shows that engineering data processing employees performing somewhat similar work on the Employer's IBM 1620 computer also work in this office with Moretti and Turner. However, the Petitioner makes no claim that these engineering data processing employees should be included in the office clerical unit.

issue are engaged in work adapting the computer to the Employer's accounting procedures.

Chavanne started with the Employer as an office messenger and progressed through various job classifications. During the transitional period in 1963 and part of 1964, and before he was given his present job classification, Chavanne worked with Guasteferro preparing for the installation of the 1440. In March 1965, he received his present title and began to work on a program to adapt the 1440 to inventory control procedures. Chavanne is a high school graduate, attended the University of Buffalo night school for 3 years, had on-the-job training and IBM courses, and has taken a familiarization course with IBM type equipment at Bryant & Stratton, a business school in Buffalo. Chavanne spends about 50 percent of his time doing work related to the 1440, and the remaining 50 percent of his time is spent on forms control, not an EDP departmental operation, and systems and procedures development, unrelated to the 1440. This latter work was formerly performed by various supervisors in the plant and was never performed by bargaining-unit personnel, and is the same work as he was previously performing as the supervisor of systems control.

Blyth and Wittig, also systems and procedures analysts, are supervised by the manager of materials, Murnane, because the computer work which they are doing is functionally related to the department that Murnane supervises. Blyth and Wittig are primarily responsible for converting a manual ledger system to a 1440 application. On December 1, 1963, Wittig was promoted to a systems and procedures analyst. Blyth was hired on June 22, 1964, as a systems and procedures analyst. Both Wittig and Blyth are college graduates, have taken IBM courses on the 1440 computer, and from December 1963, to June 1964, worked on systems and procedures to be utilized when the 1440 arrived. The duties of systems and procedures analysts involve the development of systems and procedures. In this regard, the decisions of Chavanne, Wittig, and Blyth are based on general knowledge of company policies and procedures and application to areas not previously covered. They also modify old procedures to meet new conditions, and administer all phases of the development, application, installation, and maintenance of systems in material control, purchasing, production control, and related areas. The systems and procedures analysts coordinate the work of operating personnel in all departments, through department heads, as required, when action is necessary and related to the successful installation of a system; make feasible studies, including detailed cost analysis, machine recommendations, and organization changes, as required, to maintain operations at a progressive and competitive level; develop long range plans for plantwide systems and procedures network to integrate and simplify methods of accumulating data for management decisions.

A systems and procedures analyst has a weekly salary of \$119.10 to \$134.85. Under the Petitioner's contract, labor grade 9 receives a weekly salary in the range of \$118.23 to \$131.48.

The work described above was not performed by any employees of the Employer prior to 1963, when the Employer began to prepare for the installation of the 1440 computer. The five employees sought by the Petitioner operate the 1440 computer only to test, clarify, or correct programs which they have devised. Thereafter, the console operator runs the program as a routine matter. If the console operator encounters any problems, he checks with the person who devised the program.

Since the systems and procedures analysts, and the assistant, electronic data processing and planning employees, are engaged in work that is completely new to the plant, namely, devising procedures and systems for the newly acquired 1440 computer, they are not engaged in work which was previously performed at the time of the certification in 1951; it appears that the Petitioner did not claim to represent or attempt to bargain for these employees during the contract negotiations in August 1964, sometime after the jobs involved in this proceeding were established. Considering these factors, along with the differences in their job function, responsibilities, and use of initiative and judgment from that of employees in the clerical unit, we find, upon the entire record, that the systems and procedures analysts and the assistant, electronic data processing and planning employees, cannot be regarded as an accretion to the existing clerical unit.<sup>5</sup> We shall therefore deny the Petitioner's motion to amend the certification and shall dismiss the instant proceeding. In view of our dismissal for the above reasons, we find it unnecessary to decide whether Moretti and Turner are supervisors within the meaning of the Act, or whether the systems and procedures analysts, and assistant, electronic data processing and planning employees, are professional or technical employees.

[The Board dismissed the petition for clarification of unit.]

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<sup>5</sup> *General Iron Works Co.*, 150 NLRB 190; *Aluminum Company of America*, 146 NLRB 929.

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**Rohm & Haas Company and United Industrial Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District, AFL-CIO.**  
*Case No. 4-CA-3598. October 14, 1965*

### DECISION AND ORDER

On July 26, 1965, Trial Examiner Sidney S. Asher, Jr., issued his Decision in the above-entitled proceeding, finding that the Respondent  
155 NLRB No. 25.