

scribed by Section 8(b)(4)(D) of the Act to assign the above work to members of Local 562 rather than to employees of the Layne-Western Company represented by Local 554, Well Drillers Division, International Union of Operating Engineers, AFL-CIO.

Lockheed Aircraft Corporation and Engineers and Architects Association of Southern California, Burbank Chapter, Petitioner.

Case No. 31-R-2213 (formerly 21-R-2213). November 10, 1965

**SUPPLEMENTAL DECISION AND ORDER
DENYING MOTION TO CLARIFY**

The Petitioner requests clarification of a unit of engineering employees for which it was certified by the National Labor Relations Board in 1944. At that time the Board set up separate voting groups of salaried engineering employees (with listed exclusions) and hourly paid engineering employees (with listed exclusions)¹ but provided that if either union won in both groups, the groups would be merged into a single appropriate unit.² As a result of those elections the Engineers and Architects Association of Southern California, Burbank Chapter—now known as Engineers and Scientists Guild, Lockheed Section, and herein referred to as the Guild—was certified on December 29, 1944, in a single unit of engineering employees. Specifically the certification reads as follows:

All engineering employees of the Lockheed Aircraft Corporation, Burbank, California, in the classifications listed in Appendix A and C of the Decision and Direction of Election [58 NLRB 1188], including employees in the classification of field service men who, upon investigation, are shown to be such engineering employees temporarily assigned to field duty, but excluding employees in the classifications listed in Appendix B and Appendix D of the said Decision, and all administrative, executive, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

This was a unit of 49 classifications. Early in 1947 the classification of commercial artist was included as the result of Petitioner's representation petition seeking 11 additional classifications.³ In its

¹ 58 NLRB 1188.

² 59 NLRB 274, Supplemental Decision and Amendment to Decision and Direction of Elections.

³ 72 NLRB 551.

Decision and Direction of Election the Board found that commercial artists did work of a technical nature, were employed almost exclusively in the engineering division, and had a close and intimate association with engineering employees.⁴ This classification had not been considered in the earlier Board proceeding establishing the unit of engineering employees, and was afforded an opportunity to vote on inclusion.⁵

Collective bargaining between the Employer and the Petitioner ensued. The current contract unit numbers about 2,100 employees and the contract now lists approximately 180 classifications, although many are steps or grades of a basic classification included in the original unit, such as design specialist, an original classification, and the newer design specialist-senior.⁶

In May 1964 the Petitioner filed the motion to clarify certification which is now before us, alleging that "since the certification, but in particular in recent years" the Employer has classified engineering employees in nonunit classifications and refused to recognize the said employees as members of the bargaining unit even though they continued to perform substantially the same work they performed while in the bargaining unit. Also it alleged that it had repeatedly requested, without success, the "non-unit classifications of employees which the Petitioner believes are properly members of its unit." The Employer filed a motion in opposition urging that the passage of time since certification made clarification inappropriate.

On July 1, 1964, the Board ordered a hearing on the issues raised. This was held on 11 days during October 1964. Briefs were filed by the parties early in 1965.

The dispute involves the unit placement of the following categories:

Quality reliability assurance group: The function of this group is quality control and inspection. It is an outgrowth of two classifications created in 1959—quality analyst and quality analyst specialist—performing work which before that time was known simply as inspection or quality control. This was a part of the operations branch and not encompassed within the 1944 unit. The group includes four clas-

⁴ Classifications which the Board declined to include at that time were: tool designer, technical illustrator, production processor, estimator, production change analyst, materials engineer, industrial engineer, cost engineer, manufacturing planner, and manufacturing designer. It noted that the last three did not then exist in the Employer's organization, and that three others (estimator, production change analyst, and materials engineer) had been specifically excluded in 1944, with no change in duties after that.

⁵ An additional unit represented by the Guild resulted from a 1952 representation proceeding. In an unpublished decision, Case No. 21-RC-2711, the Board granted a severance election for tool designers and manufacturing designers, classifications included in a unit represented by another union, and these employees have since been separately represented by the Petitioner.

⁶ The record indicates that in 1948 the classification of staff engineer was dropped from the contract by mutual agreement. At the hearing on this motion for clarification the parties were unable to agree on a stipulation reflecting other changes or mergers in classifications covered by the contract unit.

sifications, with their accompanying senior designations: QRA electronic engineer, QRA engineer (all aircraft functions excluding electronics), QRA planning engineer, and QRA specialist. The 1959 change in classification gave QRA branch status, with its manager reporting directly to the Employer's president. As a branch, QRA maintains an organizational structure to inspect all incoming products, and all toolings from which the products are made, machined, fabricated, and assembled. QRA runs inspections through assembly and final flight. There are approximately 25 engineering employees from the unit who are assigned to the test services Department of QRA. The Guild emphasizes this and contends that the employees here in question are engineering and technical employees having a community of interest with the engineering unit already represented and hence a proper accretion to it. The Employer likens the function of these employees to that of outside liaison man⁷ excluded from the 1944 unit, and contends that this type of employee has historically been excluded from the unit.

At the time of hearing the group consisted of 52 employees. Only 8 have been transferred from classifications represented by the Guild; 14 have engineering degrees. The QRA electronics engineers analyze failure data supplied by customers, by Lockheed field service representatives, and by plant employees. They are sometimes assigned to a vendor's operation and 30 to 40 percent of their time is spent in contact with vendors. Their reports are sent to vendors as well as to the Lockheed engineers who have devised the test equipment and procedures. The QRA engineers (nonelectronic) spend 20 to 30 percent of their time in contact with outside suppliers, 10 percent with Lockheed operations branch, and 5 percent with Lockheed engineering. Testimony indicates that they may, for example, dismantle a non-functioning fuel pump, analyze the difficulty, and then refer the problem to the engineering branch. There were 20 in this classification at the time of hearing, 5 with engineering degrees. QRA planning engineers-senior write the quality control portions of contract proposals. There were four of these employees at the time of hearing, two with engineering degrees and no employees in the nonsenior category. Three had transferred from unit classifications. Eighty-five to ninety percent of their time is spent within the QRA Branch and their contact with the engineering branch is minimal. QRA specialists coordinate other branch procedures as they relate to quality, audit compliance with quality requirements and procedures, and check whether the quality of technical data is being maintained. They also prepare presentations to management and industry, write speeches for QRA personnel, and compile monthly performance reports of the branch.

⁷ 58 NLRB 1188, 1196.

There is little contact between them and outside vendors. An engineering degree is not considered necessary, but 2 of the 10 have degrees. None transferred from unit classifications. Those in this specialist classification have previous experience in master scheduling, financial operations, and staff administration, as well as in inspection.

Although the work of this branch is, as a whole, related to engineering, it appears to be a continuance of functions never encompassed in the unit. On this record the continued exclusion of this group seems justified.

Development and test coordinators: This is a classification established in 1961. At the time of hearing there were five of these employees. They handle problems in connection with the timely development, test, and qualification of new equipment, mostly as developed by customers or vendors. Part of their duties concerns delivery schedules for purchased parts and they participate on an interbranch committee which sets delivery dates. The Employer considers an engineering background "practically mandatory" for this work, although not necessarily an engineering degree. None of the incumbents has an engineering degree. Two were transferred into this classification from a unit classification and all these coordinators have daily contact with design engineers, who are unit employees. The Employer contends that they should be excluded as administrative or managerial employees, likening their work to that of project liaison man excluded from the 1944 unit. The Petitioner contends that at least 60 percent of the coordinators' time is spent with engineering employees of the engineering branch, that they are required to have an engineering background, and that their community of interest is with employees represented in the unit. The 1944 Board exclusion of project liaison man mentioned the dispatching, followup, and service functions of that classification in a context of coordinating "manufacturing units."⁸ We believe that the work of these coordinators is more closely related to design and development than to manufacturing, and, in view of their close contact with engineers in the unit, it appears that their interests are allied with those of unit employees.

Aircraft proposal engineers: There are seven employees in this classification, for which the job description is dated July 1954. The Employer contends that the work of employees so classified is not engineering in the sense of design, though it presented testimony to the effect that a "Proposal Engineer is a professional man" with "unusually broad abilities in preliminary design, new design or advancement of current design." Instead it contends that the work is administrative or executive. The Guild introduced no witnesses. In its brief it stresses the Employer's job description which speaks of the responsibility to direct assigned projects in preliminary design, including

⁸ 58 NLRB 1188, 1197.

preparation of layouts, sketches, notes, and data for inclusion in formal design studies, and the duty to collaborate "when so assigned" with company representatives in the presentation of proposals to customers. Two of these proposal engineers were identified by the Employer's witnesses, who is in charge of a Navy project in the new design division and assigns work to these two men.⁹ One of the proposal engineers is a retired Navy commander, educated as a lawyer but trained in the Navy in technical engineering and a specialist in propulsion; the other is a specialist in electronics and has a college degree in engineering. Concerning the latter, the Employer's witness testified that he meets with customers and acts as a technical program manager, responsible for "pulling the proposal together," and is authorized to make technical commitments for the Company. On the evidence before us it is difficult to express an opinion as to whether this is unit work. However, as this classification has existed for approximately 10 years without being included in the contract unit, it appears to us that the parties have acquiesced in the exclusion of this category.

Functional test liaison: There were two employees so classified at the time of hearing, one specializing in electronics and the other in other electrical areas. The former testified that he had been transferred to this classification from a unit classification as test engineer mechanical-senior, which he had held for 8 years and in which he prepared actual test procedures as distinguished from his present job of preparing "requirement sheets" for such tests. This transfer was 2 years earlier, at no increase in pay. The other functional test liaison man was hired into the classification about 10 years ago. Neither incumbent has an engineering degree. These men work in a building housing two engineering projects and were working in conjunction with these projects at the time of hearing. The preponderance of the employees working in the building are in classifications represented by the Guild. Organizationally these functional test liaison employees are within the Employer's technology division, which is one of six divisions under the chief advanced design engineer. The Employer contends that they should be excluded from the unit because their duties are "administrative" within the meaning of the 1944 certification. It produced no witness as to this classification but emphasis in its brief that the job description calls for "liaison activity between the Engineering Branch and several other Branches with respect to establishment of functional test procedures." It appears from the testimony of Petitioner's witness that the work is closely related to engineering and requires an engineering background. It also appears that it may be a normal progression from that of test engineer me-

⁹ This witness was unable to identify the other five proposal engineers. However, the parties stipulated that the duties of the five who were not identified as to assignment were similar to those of the two identified.

chanical, a classification within the unit. However, this classification has existed since January 1949 without being included within the unit. In the circumstances it appears to us that the parties have acquiesced in the exclusion of this category.

Aircraft equipment stylists: The Guild in its motion refers to this classification as aircraft vehicle stylist, but the record indicates that this is the same as aircraft equipment stylist, a classification excluded by the Board in its 1944 decision.¹⁰ At that time the Board concluded that the work of this classification was essentially that of an interior decorator, artistic rather than engineering in character. However, at the time of hearing on the motion, the three employees so classified had all been transferred to this work from engineering classifications represented by the Guild. Two have had formal training in the arts, one being a graduate industrial designer, and the third holds an engineering degree. It appears from the record that the job content of this classification has changed substantially since the Board's earlier consideration of it. Vehicles being designed have become more and more complex, and human factors and operational needs, as in cockpit and flight station design, have become increasingly important. In fact the record suggests that esthetics in styling now "follow" functional design and engineering. It thus appears that the work of the aircraft equipment stylist has changed to such an extent that it is virtually a new classification with duties closely allied with those of unit employees.

Human factors family: At the time of hearing there were seven employees in this group, in three classifications: four human factors scientists, two human factors specialists, and one human factors analyst. It is the responsibility of the group as a whole to digest material in medical and scientific journals and to engage in various research projects to establish man's capabilities in space. It investigates and analyzes the physical and psychological stresses to which man may be subjected in space. The work results of this group are considered by the Employer the "design point" for engineers, applicable, for example, to the design of seats that will support pilots against fractures, and the design of space suits. The four scientists and the analyst work in the life science department, a part of the technology division of the engineering branch. Their formal training has been in physiology, psychology, chemistry, and biochemistry rather than engineering. Testimony concerning the specialist classification indicates that an anthropologist was so classified at one time. Presently one of the specialists, who has a mechanical engineering degree, is assigned to a special design project for an escape system for pilots. Engineering experience is necessary for the specialist classification.

¹⁰ 58 NLRB 1188, 1194.

The Employer contends that none of these human factors employees belongs in the unit because they do not perform engineering work and have minimal contact with engineers. The Guild urges that their work supports that of the engineering branch and points out that the scientific specialties engaged in by these employees are similar to those performed by employees represented by the Guild in various existing "scientist" and "research" classifications.¹¹ In this connection it has shown that within the contract classifications of scientist-research, scientist research-senior, and scientist-senior, the following disciplines are represented: plasma physicists, a biophysicist, a medical doctor, a molecular physicist, a geophysicist, a nuclear physicist, a biochemist, an acoustical physicist, a geologist, and an astrodynamacist. We also note that there have been transfers into the human factors group from unit classifications of design specialist-senior, equipment engineer, and design engineer senior, and transfers out of the group to service engineer-senior and service engineer specialist, also unit classifications. In the circumstances it appears that the work of this group is done directly in support of unit engineering work and that the employees have interests allied with those of unit employees.

Product evaluation group: The responsibility of this group involves protection of the Employer's interest and the interests of its customers in new technology and inventions developed by the Employer, and the licensing of said inventions. This is a problem of finding developments as they occur and stimulating employees to submit formal disclosures of invention. As of the time of hearing the group consisted of 12 employees working in the engineering branch, 11 with formal engineering degrees and 1 with comparable experience. Except for a few hired directly into the group, all incumbents were transferred from unit classifications. One had been a production design engineer-senior, a design engineer-senior, and a design engineer B. The classifications within the product evaluation group are: product evaluation engineer specialist, product evaluation engineer, product evaluation engineer analyst. The group as a whole coordinates with engineering employees and prepares technical reports which are forwarded to the legal department as a basis for the filing of patent applications. It also evaluates patent applications which are returned on the ground that outstanding patents already cover the invention sought to be patented. The Employer contends that this work is in the nature of that of an industrial engineer, a classification excluded from the unit by the Board in its 1947 decision concerning this unit.¹² We do not perceive this analogy. That classification was found to be primarily concerned with the operation of the Employer's business

¹¹ The original certification contained no "scientist" classification, but the current contract indicates that five such categories have been added by voluntary bargaining.

¹² 72 NLRB 551, 557, see footnote 4 above.

at lower cost, which the Board concluded was of an administrative and business nature. Product evaluation, on the contrary, involves primarily the engineering analysis of new designs and technology. Despite the underlying motive of added profit incident to this work, it appears that these employees have interests in common with engineering employees which would warrant their inclusion within the established engineering unit.

Research and development engineer, research and development scientist, and advance systems engineer groups: These groups, respectively, are engaged in original and independent research on current and anticipated products, in original and independent scientific research leading to the solution of basic problems as to those products, and in coordinating or providing major technical contributions to missiles and spacecraft proposals and systems studies "where scope of operations has been determined." At the time of hearing the research and development engineer classification consisted of 64 employees, the senior research and development engineer of 21, the research and development scientist of 7, the senior research and development scientist of 9, the advance systems engineer of 21, and the senior advance systems engineer of 12.

As to these groups the Employer contends, not that the work is distinguishable from unit work as in the categories separately considered in the paragraphs above, but that the employees in these categories have been excluded by it because their duties are essentially supervisory, managerial, executive, or administrative.

The supervisory contentions: Interestingly, the applicable job descriptions introduced by the Employer as prepared and used by it bear the legend "nonsupervisory."¹³ Thus the job descriptions under which the approximately 134 employees referred to above are working, prepared between 1959 and 1963, expressly negate supervisory authority in the heading. However, on the Employer's current organizational chart for its engineering branch (Employer's Exhibit No. 2(c), dated July 1964) at least 42 of the employees in these research and development and advance systems groups appear by name. The Guild refers to this in its brief, and we construe its position as conceding the supervisory status of the employees named on the Employer's chart, and as limiting its nonsupervisory argument to those task or team leaders below the chart levels and not shown on the chart. Some few of the employees not appearing on the chart work independently, but the majority work with employees reporting to them, as few as two or an average of eight, according to the Employer. As to the task or team leaders the Employer introduced testimony by management personnel that they assign work to those reporting to

¹³ Similar wording appears on most of the job descriptions in issue in this proceeding, but the others involve no supervisory problems.

them and transfer them to other tasks and that this requires the exercise of independent judgment; that they prepare merit reviews for salary increase purposes; that they prepare man-hour budgets and see that the schedules are adhered to; and that they interview and recommend applicants for employment and also recommend discharge. Employee testimony in support of these contentions is lacking. The Employer's management witnesses testified to no specific exercise of discharge recommendation and one witness said he could recall none. Examples of effective recommendation of hiring given in the Employer's brief are with reference to task leaders whose names appear on the organizational chart, and some of the testimony on "budgetary" responsibilities concerns chart-named task leaders. In addition, it appears that the man-hour budgets are actually prepared by management after recommendation by task leaders. The Guild has shown that leadmen in the engineering unit represented by it—who the Employer concedes may also act as task leaders—have exercised a similar type of man-hour budget responsibility to recommend the hours needed and then stay within the time allocated, and have assigned employees to tasks on a project. In fact it appears that it has been customary to divide engineering assignments into technical segments under task leaders who are represented in the unit. The Employer contends that the task leaders here in issue have "increased and broadened" responsibilities over and above those of unit task leaders, but, if so, this seems to be in the nature of a multiplicity of task assignments in some instances rather than a definable change in duties. The merit review function of the task leaders in issue appears to be investigated independently by admitted supervisors. In all the circumstances we believe that the Employer has not established its supervisory contention as to these research and development and advance systems classification except with respect to those whose names appear on its organizational chart.¹⁴

The managerial, executive, and administrative contentions: The thrust of the Employer's contention in this regard is that some of these research and development and advance systems employees, working without employees reporting to them, are by reason of their duties closely allied with management and properly excluded from the unit for that reason. The Employer urges this particularly as to research and development engineers Detweiler, Moore, and Schmidt, Senior Research and Development Scientists Thompson and Mundie, Advance Systems Engineer LaPlant, and Senior Advance Systems En-

¹⁴ In its brief the Employer contends that the legend "nonsupervisory" on its research and development engineer job description is meaningless because "several employees in mid-1964" who were transferred to these jobs were already supervisors and their duties did not change. We note that four of the five specifically referred to by the Employer in this connection appear by name on the current organizational chart. This hardly establishes that the "nonsupervisory" legend lacks significance as to many not named on the chart.

gineer Oda. Detweiler, Moore, and Schmidt each have technical specialties about which they consult with vendors to the Employer and they have industrywide committee assignments concerning technical standards pertinent to their specialties. LaPlant is engaged in an advanced design endeavor in connection with which he visits military installations. Oda has frequent contact with a subsidiary of Lockheed Corporation in connection with his technical specialty. Both LaPlant and Oda work without supervision when on special tasks. When not so engaged they work under a task leader named on the organization chart. Together with two other nonunit employees not here in issue, Thompson and Mundie are attached to the office of the research director. This office plans, organizes, monitors, and controls the Employer's research projects, which numbered 125 at the time of hearing. One of the functions of the office of research director is to determine areas of research within the company which can usefully be called to Government attention in order to obtain funds, as well as to promote industry research proposals to the Government in order to elicit support. Thus it appears that Thompson and Mundie have interests closely allied with management.¹⁵ With respect to the others referred to above, Detweiler, Moore, Schmidt, LaPlant, and Oda, the managerial function emerges less clearly on the record, which is susceptible of the interpretation that the outside contacts of these men are of a technical liaison nature requiring the exercise of judgment and discretion but not involving the type of employer policy direction which would distinguish their basic interests from those of engineering employees within the unit.

Advanced development project: Because of the classified nature of this project, no job descriptions and no organizational charts were introduced in evidence. In fact Project Administrator Gilbert, who has personnel responsibility, declined to explain the organizational setup because of security. He did outline the work of 14 of the employees assigned to this project, those named in the Petitioner's motion. These 14 were transferred to this work in June 1963 from the unit classification of design specialist-senior. Actually the project has approximately 40 individuals classified as research and development engineer-advanced design project, or as senior engineer, with groups of from 2 to 45 employees working under them, generally in unit classifications. The parties stipulated that the responsibilities of the 40 in the direction of employees is substantially the same as that of the 14 as to whom Gilbert testified. The Employer would exclude the 40 based on their additional responsibility, after promotion, "of directing people and participating in their ratings and recommendations on salaries, and so forth, which they could not do

¹⁵ In its brief the Guild disclaims interest in representing Mundie and Thompson on the ground that "they exercise staff as opposed to line functions."

prior to that time." Gilbert testified, however, that these men still make drawings and layouts and that their direction of other employees is technical direction, also that recommendations are a matter of joint evaluation with him, and possibly with "the Senior Engineer." Gilbert admitted firsthand knowledge of the performance of most of the Guild unit employees. Concerning the "buying" function of the research and development engineers-ADP, Gilbert stated that they do not actually buy, but work with a purchasing department representative, but that they do establish the technical requirements of the item to be purchased and are in position to judge whether it is overpriced relative to its technical complexity.

Bremberg, 1 of the 14 named in the motion, testified for the Guild. He is responsible for the hydraulics system "of a major vehicle" and has six to eight men reporting to him in what is known as a design group. According to Bremberg, he and three other research and development engineers-ADP (Rapp, Rockil, and Sorenson) and one stress engineer, a unit classification, have similar authority, and are all task leaders on the project. Before his reclassification out of the unit Bremberg had experience as a task leader with three or four employees reporting to him. He testified that he considered the reclassification a change to supervision, "I guess," but could specify no actual difference in his authority except that the other men came to him to have questions answered and he could change tasks back and forth among them, whereas before "we just all got in and accomplished what we were after." On redirect examination Bremberg agreed that it was still true that all of them "worked as a group and just went out and saw that things got done."

Of the 14, two are senior engineers, with a higher salary grade: Robertson and Gath. Robertson is responsible for "all functional systems in a major vehicle," such as hydraulics, controls, "service" or boosters, and ground handling. Some of the research and development engineers-ADP named by the Guild in its motion report to Robertson: Bremberg, Zuck, Rapp, and Gavette. With their design group members they make up the approximately 35 men reporting to Robertson. Gath, the other senior engineer in the group of 14, is responsible for the "complete power plant installation in a major vehicle," together with its controls and actuating mechanisms. There are no research and development engineers-ADP between Gath and the six to eight men who work directly with him. Although difficult to determine on the limited testimony given concerning this project, it appears that Robertson and Gath may be managerial because their respective responsibilities imply policy making authority. As to all others named, we do not believe that the Employer has demonstrated that their reclassification from the unit category of design specialist-

senior has actually changed their responsibilities from those of a trusted engineering employee to those of a supervisor or a managerial employee.

We do not touch upon the evidence concerning the classification of service engineer editor, inasmuch as the Employer conceded at the close of the hearing that this was unit work.

It is apparent from the above that some of the categories sought by the Petitioner have interests in common with employees in the unit and other categories do not. The Employer urges that the Guild's motion to clarify the unit with respect to the disputed categories should be dismissed. It contends, again, that the current issues cannot be resolved by clarification because the certification here is too old and its content too indeterminate by reason of changes resulting from bargaining by the parties. We do not agree, and, in fact, consider that the long collective-bargaining history for this large unit tends to support the opposite conclusion.¹⁶

The Employer, in its brief, further argues that the impact of Section 9(b)(1) of the Act¹⁷ is such as to preclude the Board from clarifying the unit involved herein. We find merit in this position. While the record does not furnish an adequate basis for determining whether each particular category is or is not professional, it is apparent that some of those who have a community of interest with the unit employees are in fact professional employees. The parties have stipulated that the existing unit, certified before the passage of Section 9(b)(1) in 1947, includes both professional and nonprofessional employees. It was established without a separate ballot among the professionals, and if we were to grant the Petitioner's request we would add other professionals without a separate election. Under these circumstances, we are of the opinion that Section 9(b)(1) precludes the Board's granting the relief sought, whether that section be interpreted as requiring an election among only those professionals sought to be added or among all professionals including those presently in the existing unit. Accordingly, we shall deny the Petitioner's motion.

[The Board denied the Petitioner's motion to clarify the existing bargaining unit.]

MEMBER ZAGORIA took no part in the consideration of the above Supplemental Decision and Order Denying Motion to Clarify.

¹⁶ It is noted that for clarification purposes the Board does not now distinguish between Board-created units and those arising solely by contract. *Brotherhood of Locomotive Firemen and Enginemen*, 145 NLRB 1521, 1523.

¹⁷ Section 9(b)(1) provides: ". . . That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; . . ."