

## DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute.

1. Maintenance electricians employed by Vickers Incorporated, Division of Sperry Rand Corporation, who are represented by International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local No. 792, are entitled to perform the installation of test stands and other related production equipment in the new addition to the Employer's plant at Jackson, Mississippi.

2. International Brotherhood of Electrical Workers, Local 480, is not entitled to force or require Vickers Incorporated, Division of Sperry Rand Corporation, its successors or assigns, to assign any of the above work to employees it represents.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Electrical Workers, Local 480, shall notify the Regional Director for Region 15, in writing, whether it will or will not refrain from forcing or requiring Vickers Incorporated, Division of Sperry Rand Corporation, its successors or assigns, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the above-described work to employees of such Company represented by such Union.

---

**Union Carbide Corporation Chemicals Division and International Association of Machinists, AFL-CIO, Petitioner and Local Union 625, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Petitioner.<sup>1</sup> Cases Nos. 9-RC-6285, 9-RC-6295, and 9-RC-6296. January 5, 1966**

## DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Mark Fox. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, by direction of the Regional Director for Region 9 these cases were transferred to the Board for decision. Briefs have been filed by the Employer and the Plumbers.<sup>2</sup>

<sup>1</sup>The petitioning unions are hereinafter referred to as Machinists and Plumbers.

<sup>2</sup>The Employer's request for oral argument is hereby denied as the record and briefs adequately present the issues and positions of the parties.

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. Questions affecting commerce exist concerning the representation of employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.
4. There is no history of bargaining at the Employer's Institute plant at Institute, West Virginia, where it is engaged in the production of synthetic organic chemicals.

### The Units Sought

In Case No. 9-RC-6285 the Machinists seeks a production and maintenance unit of approximately 1,400 employees. In Case No. 9-RC-6296 the Plumbers seek a unit composed of all plumbing-pipefitter employees, including instrument repairmen, welders, and helpers and/or apprentices, approximating 170 employees.<sup>3</sup>

At the hearing, the Plumbers contended that the three classifications petitioned for constitute a homogeneous group of skilled craftsmen appropriate for representation in a unit by themselves. Alternatively, it contended that separate units of each of the three classifications or any combinations thereof are appropriate for purposes of collective bargaining. Additionally, the Plumbers sought to intervene in the Machinists' petition and seek inclusion on the ballot in the production and maintenance election. This intervention is opposed by both the Machinists and the Employer on the ground of inconsistency with the petition for craft units. The Employer and the Machinists also oppose the establishment of any craft units, contending that only a single production and maintenance unit is appropriate.

### The Employer's Operations

At its Institute plant, the Employer produces more than 200 synthetic organic chemicals, most of which are toxic, flammable, or explosive. Of these 81, are intermediates, indispensable to the manufacture of certain other end-product chemicals, but which themselves may also be utilized for sale.

There are approximately 1,406 hourly rated employees at the plant who would normally comprise a production and maintenance unit.

<sup>3</sup> In Case No. 9-RC-6295 the Plumbers also petitioned for a unit of about 35 insulator employees, which petition, in their brief, they ask to have "dismissed." We treat this as a request to withdraw the petition and grant it

Of these, 564 are attached to the maintenance department. The remainder are found in operations, equipment, testing and inspection, and shipping. It is only from among maintenance department personnel that the Plumbers wish to extract a craft unit.

The Employer's operations are comprised of 30 independent operating units, each supervised by a department head, spread over 415 acres, and divided into 5 field maintenance areas. There are, in addition, two maintenance shop areas, not immediately involved in the operational process. The field areas are again subdivided into one or more zones. Each field area has its own complement of maintenance personnel permanently assigned, which includes pipefitters, electricians, boilermakers, machinists, laborers, or whatever other classifications are essential to the operation of the particular field area involved. Each field area is headed by a maintenance general foreman who has mainly administrative responsibility. Operationally, maintenance is broken down into zones, each headed by a maintenance foreman who is directly responsible to the department head (or heads, if there is more than one operating unit in the zone) having operational unit responsibility. Department heads deal directly with maintenance foremen and must maintain close personal contact because of the unit operation.

The department head also exercises supervisory authority over the operating foreman, and must integrate the production and maintenance functions in order to satisfy the operational needs of the plant. The operating foreman oversees the work of operators, shift utility mechanics, and shift instrument repairmen. The maintenance foreman has under his control a multicraft group operating on a zone basis. The maintenance foreman himself is most likely proficient in only one of the craft classifications, yet the various craft classifications report to him and not to a foreman expert in their own crafts.

Basic raw materials in the plant are natural gas, naphthalene, and chloroform. The natural gas is further reduced to three major components: ethylene, propylene, and butadiene. Production of the 81 chemicals above noted is accomplished only through a complex procedure utilizing almost entirely each of the 30 operating units, among which there is an interdependency and integration vital to the complete operation. The production process so described is denoted by the Employer as a "unit operation," a term of art of industrial engineering applied to a methodology in the operation of an industrial plant.

The operations of the plant are continuous and, by their nature, permit no interruption once begun. Storage of intermediates or end products is restricted because of chemical instability and toxicity. Many of the products are subject to rapid decomposition, which can result in autoreactive explosions. Because of these factors, the entire

process advances in closed pipe systems. Moreover, the continuous operation of each operating unit is coordinated with and dependent upon the flow of one or more of the 200 in-process chemicals constantly being produced.

Each operating unit is also dependent upon a steady supply of electricity, water, steam, and nitrogen. Maintenance personnel, who are assigned to specific areas, and, as needed, to zones within the area, are responsible for the maintenance and repair of the two electrical power plants and the substations located in many areas and zones. Water, used for cooling, is constantly pumped through all areas of the plant. Each minute, 280,000 gallons of water are used by the plant. The responsibility for maintaining and repairing this system lies with the maintenance department on area and zone bases. The steam and nitrogen systems too are absolutely essential for the continuous operation of the plant, the servicing of which systems falls to maintenance personnel in the zones where they are assigned.

#### Case No. 9-RC-6296

Seeking to represent separate craft classifications in either a single unit, in separate units, or in combinations thereof, the Plumbers contend that the right of craftsmen to separate representation should not be denied merely because of the Employer's highly integrated production process. The 89 pipefitters, 33 welders, and 50 instrument repairmen sought by the Plumbers comprise a total of 172 out of 564 in the maintenance department.

Typically, the performance of maintenance work at the Employer's plant arises in the following manner: A written work request originates with a department head or his technical staff and is forwarded to a maintenance analyst operating in a zone. He in turn confers with the maintenance foreman in the zone where the work is to be performed, discussing any special requirements of the job or hazards that might arise. The maintenance analyst then details the procedure to be followed and the number and type of maintenance people to be used, also apprising the maintenance coordinator of his requirements, so that a proper balance of maintenance manpower can be maintained at all times. While this is going on, the operating foreman makes preparations for the eventuality of the maintenance work by shutting down, bypassing, or substituting for the equipment that is to be serviced. After checking with the operating foreman, the maintenance foreman then approves the commencement of the repair or maintenance. On completion, the operator will check the equipment in the presence of the maintenance employees, at which time additional repairs, if necessary, will be made. Because of the highly integrated nature of the operation, each department head assigns priorities to

the maintenance work. "A" priority is of a highly urgent nature and must be completed within a prescribed time; "B" priority permits delay for a limited period only; and "E" requires immediate attention. About 25 to 30 percent of the maintenance work is of the last variety.

The journeymen employees in the classifications sought by the Plumbers are known as group A mechanics, with a top rate of \$3.57. Apprentices, known in the plant as trainees, start at \$3.44. Operators, on the other hand, receive a \$3.50 top rate, but are also entitled to a rotating shift differential of 11½ cents.

All employees begin as trainees at a base rate and progress to top rate within varying periods up to 48 months. Rate increases are granted at 3-month intervals during the first year, and at 6-month intervals thereafter until the top rate is achieved. All employees are paid weekly by the same paymaster, although maintenance personnel punch an area clock while operating personnel punch different clocks. Fringe benefits and employee services are provided uniformly to all hourly employees. The same seniority provisions are applicable to all hourly employees. The plant has three rotating shifts for production employees: 7 a.m. and 2 and 11 p.m. The great majority of maintenance employees work a 7:30 a.m. to 4 p.m. shift, although some maintenance personnel are assigned to the night shift from 4 p.m. to midnight; and occasionally, maintenance men are assigned, though not in large numbers, to rotating shifts.

Generally, new hires at the plant begin in the laborers' group, a classification in the maintenance department. From this classification, however, the employee may move to any other classification in the plant, depending on job vacancies. Although, based on company policy, it is theoretically possible for a group A mechanic in one of the craft classifications to move into a top rated operator's job, and vice versa, such occurrences would be highly unlikely. In point of fact, the incidence of transfer from maintenance to operational function is rare, although there are transfers from one maintenance classification to another, and there is some overlap of job functions among maintenance classifications. Newly hired employees who will ultimately work on one of the craft classifications are not required, at the time of hire, to have any craft experience or apprenticeship training. There is a general training program conducted for all maintenance department employees however. Thus maintenance trainees must take 60-hour classroom courses in basic mathematics, basic blueprint reading, basic science, and basic freehand sketching over an 18-month period. Operators, on the other hand, receive no formal classroom training, but are provided a manual of operations, and are given on-the-job training.

Although maintenance work, and specifically the work performed by the three classifications sought by the Plumbers, requires close contact with production personnel, the actual performance of the maintenance work is wholly within the competence and responsibility of the pipefitter, welder, or instrument repairmen and subject to the supervision of a foreman in the maintenance department.

Thus, pipefitters are required to read blueprints, sketch pipe fabrication, fabricate, install, remove, and repair pipe, and install instruments. They must belt and unbelt pipe, insulate tubing, do steam tracing and instrument tubing, blank line, perform valve removal and repair valves, steams traps, and steam vacuum systems. All of these we find to be the usual and recognized duties assigned to pipefitters requiring the utilization of normal skills of craft pipefitters. Although some of the less skilled of these functions are performed by other classifications of employees at the Institute plant, notably by the 48 shift utility mechanics in the production department, none exercise all the skills or functions of pipefitters. Nor do they perform any part thereof with the same frequency as the pipefitters. Moreover, shift utility mechanics have other job functions which are wholly unrelated to pipefitting and occupy a substantial part of their time. From time to time shift utility mechanics may transfer from that classification into the classification of pipefitter trainee, in which event, they, like other apprentice pipefitters, become trainees subject to the trainee's wage rates. Accordingly, we reject the Employer's contention that shift utility mechanics must be included in a unit of pipefitters. We find further that the pipefitters are trained to be craftsmen pipefitters and that performance of their work tasks normally requires the use of skills of a craftsman pipefitter. However, since the Plumbers have asked the addition of welders to the craft unit petitioned for, we will consider such request.

The welders, together with their trainees, perform the overwhelming portion of their work in the central shops, where they are permanently assigned. There is no overlap of duties between welders and any other classification in the plant, the journeyman welder being required to be proficient in the three basic types of welding: acetylene, heliarc, and electric. It is true that welders, who are responsible for doing all the welding in the plant, at times perform welding for other classifications. But more than 90 percent of their work is performed in conjunction with work being done by pipefitters. Most often, the pipefitter sketches the work to be done and sends it to the welding shop where it is fabricated and welded by welders under the supervision of a welder foreman. Accordingly, we find that between the

pipefitters and the welders there is a close community of interests and that together they constitute a homogeneous group of skilled craftsmen, appropriate for representation in a unit by themselves.<sup>4</sup>

Regarding the additional inclusion of instrument repairmen with pipefitters and welders in the craft unit petitioned for, the Plumbers has offered no support, and we find none, for such a unit grouping. We do find, however, that by themselves the instrument repairmen constitute an identifiable craft and are entitled to separate representation if they so choose.<sup>5</sup> Thus, instrument repairmen are required to calibrate, maintain, and adjust over 7,000 highly sensitive pneumatic and electronic control instruments. In investigating malfunctions, the instrument repairman is called upon to exercise a high degree of judgment, and to utilize electronic instruments in arriving at a diagnostic decision. Because of the highly complex nature of his job, the instrument repairman receives more specialized training than any other classification in the plant and is considered the most highly skilled of all bargaining unit employees. Thus, the instrument repairman must, in addition to the basic courses given to all maintenance department employees, take courses in basic electricity and electronics as well as electronic and pneumatic instrumentation. The special craft skill of instrument repairmen is even further emphasized by the fact that, unlike other craftsmen who work under a maintenance foreman not necessarily proficient in their particular craft, the instrument repairman is supervised solely by an instrument repairman foreman. On this basis, we find that instrument repairmen and their trainees constitute a homogeneous group of skilled craftsmen, appropriate for representation in a unit by themselves.<sup>6</sup>

In determining in this case the character and scope of the unit or units that will assure employees the fullest freedom in exercising their Section 7 rights, we have considered the functional and operational integration which exists at the Employer's plant, together with all other relevant factors.<sup>7</sup> Upon our appraisal of all the circumstances, including the absence of a bargaining history on a more comprehensive

---

<sup>4</sup> *Bethlehem Steel Company, Shipbuilding Division, Beaumont Yard*, 108 NLRB 241; cf. *Koppers Company, Inc., Chemical Division, Williams Plant*, 117 NLRB 422, 426-427

<sup>5</sup> *Marinette Paper Company*, 127 NLRB 1319; *The General Tire and Rubber Company*, 106 NLRB 246, 249

<sup>6</sup> There are, among the 50 instrument repairmen, 4 who do precisely the same work but who are attached to the production department and who work under a production foreman. We do not, under all the circumstances, find this separate line of supervision sufficient to exclude the shift instrument repairmen from the craft unit found appropriate.

<sup>7</sup> Our decision herein is not to be taken as foreclosing the possibility that, in other circumstances, the integration of operations and functions may be such as to warrant a finding that only an overall unit is appropriate. Nor do we express an opinion as to how we would rule in a case similar to this one, but where, however, there is a history of bargaining on a production and maintenance basis and severance of craft units is sought.

basis, we find the craft units above described to be appropriate for purposes of collective bargaining if the craft employees desire separate representation.<sup>8</sup>

Case No. 9-RC-6285

All parties agree and it is clear that a production and maintenance unit such as is sought by the Machinists is appropriate. However, as we have found that the craft units sought by the Plumbers may also be appropriate, our final determination of the scope of the production and maintenance unit must wait upon an expression of the desires of the employees involved in the elections hereinafter directed.

A disagreement exists as to the placement of six field inspectors, who, the Machinists contends, without specifying a reason therefor, should be excluded from the unit. These six employees are attached to the equipment testing and inspection department composed of 21 employees. None of the six, however, is included in the vacation schedule of the ETI department, although wage scales are the same. Field inspectors are not assigned overtime as are other inspectors and are not included in the overtime roster from which assignments are made. They work in air-conditioned offices which may be locked, whereas ordinary inspectors work on the plant floor which is not air-conditioned. Field inspectors do not carry toolboxes, which are required of inspectors; they are engaged principally in paperwork and make only sight inspections, without recourse to tools. In the Employer's telephone directory, field inspectors, unlike ordinary inspectors, are officially listed individually as inspector coordinators. There is no evidence that would point to supervisory status for these employees. Nor is there evidence that they fall within some other classification normally excluded from a production and maintenance unit. However, as the record is not entirely clear as to their precise status, we are unable to conclude at this time whether or not the field inspectors share a sufficient community of interest with other bargaining unit employees as to require their inclusion in the unit. We do not, therefore, make final disposition as to their status but shall permit them to vote subject to challenge.

The Plumbers' intervention and participation in an election in the overall production and maintenance unit is opposed by the Machinists on the ground of inconsistency with its petition for the craft units.

<sup>8</sup>In so finding, we do not ignore the Employer's argument that an unplanned operational breakdown or functional disorder may create a serious hazard to the welfare of the plant and its personnel. We do not, however, view the grouping of employees in more than one bargaining unit as either enlarging the already existing possibility of hazard, or of preventing the Employer and its employees from taking the necessary steps to deal with such potential hazards.

For the reasons set forth in *Schick, Incorporated*<sup>9</sup> and *F. N. Burt Company, Inc.*,<sup>10</sup> we will require the Plumbers to elect between appearing on the ballot for the production and maintenance unit or on the ballot for the craft units.<sup>11</sup>

On the basis of the entire record, we find that all group A mechanics employed as plumber-pipefitters and welders are craftsmen, and together with pipefitters and welder trainees may constitute a separate appropriate unit if they so desire. We further find that all group A mechanics employed as instrument repairmen and all shift instrument repairmen are craftsmen, and together with instrument repairmen trainees may constitute a separate appropriate unit if they so desire.

In view of the foregoing we shall make no final unit determinations at this time but shall direct that the questions concerning representation that have arisen be resolved by separate elections by secret ballot among the employees in the following voting groups, excluding from groups (a) and (b) all other employees and supervisors as defined in the Act:

(a) All group A mechanics employed as plumber-pipefitters and welders, and pipefitters and welder trainees.

(b) All group A mechanics employed as instrument repairmen, including shift instrument repairmen, and instrument repairmen trainees.

(c) All production and maintenance employees, excluding the employees in voting groups (a) and (b) and all professional employees, guards, and supervisors as defined in the Act.

If the majority of the employees in either voting group (a) or (b) select the Plumbers, the employees in that group will be taken to have indicated their desire to constitute a separate bargaining unit, and the Regional Director conducting the elections is hereby instructed to issue a certification of representation to the Plumbers for such voting group, which the Board under the circumstances finds to be an appropriate unit for purposes of collective bargaining. However, if a majority of the employees in either voting group (a) or (b) does not vote for the Plumbers, that group will appropriately be included in the production and maintenance unit and their ballots shall be pooled with those for group (c).<sup>12</sup> If a majority in voting group (c), including any pooled group, vote for the Machinists, that Union shall be certified as the

<sup>9</sup> 130 NLRB 1501.

<sup>10</sup> 130 NLRB 1115.

<sup>11</sup> For the reasons set forth in his dissenting opinion in *F. N. Burt Co., Inc.*, *supra*, Member Fanning does not agree with our disposition requiring the Plumbers to make an election.

<sup>12</sup> If the votes are pooled, they are to be tallied in the following manner: The votes for the labor organizations seeking separate units in groups (a) and (b) shall be counted as valid votes but neither for nor against the labor organizations seeking to represent the production and maintenance unit. All other votes are to be accorded their face value.

representative of employees in such group, which, under these circumstances the Board finds to be a single appropriate unit for purposes of collective bargaining.

[Text of Direction of Election omitted from publication.]

CHAIRMAN McCULLOCH and MEMBER JENKINS took no part in the consideration of the above Decision and Direction of Election.

---

**Jem Mfg., Inc. and Sheet Metal Workers' International Association, Local 270, AFL-CIO.** *Case No. 16-CA-2306. January 6, 1966*

### DECISION AND ORDER

On September 14, 1965, Trial Examiner Sidney D. Goldberg issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

The National Labor Relations 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 brief, and the entire record in the case, and hereby adopts the findings and recommendations of the Trial Examiner, as modified herein.

Although we agree with the Trial Examiner's findings that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to recognize and bargain with the Union, we do not adopt all of his reasoning in support of such findings.

As more fully detailed in the Trial Examiner's Decision, on March 2, 1965, the Union met with Respondent coowners, stated that it represented a majority of Respondent's employees, and presented authorization cards to the Respondent to prove its majority. Although John Wheatley, one of the coowners, said that he did not think the employees should be represented, Wheatley examined the authorization cards and copied down the names. The Union then presented the Respondent with a written request for recognition and a proposed agreement recognizing the Union and requested that Respondent sign