

Federal Electric Corporation, Western Test Range and Radio Officers Union, affiliated with Commercial Telegraphers Union, AFL-CIO, Petitioner and International Brotherhood of Electrical Workers, AFL-CIO, and Its Local No. 336. *Case No. 31-RC-37 (formerly 21-RC-9711). March 25, 1966*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before Hearing Officer Kenneth L. Keith. The Hearing Officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case,¹ 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 employess of the Employer.
3. A question affecting commerce exists 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. The Petitioner seeks a unit of all electronics technicians of the Employer working aboard ships of the Range Ships Department located at Port Hueneme, excluding electronics technicians working on shore, office clerical employees, guards, and supervisors as defined in the Act. The Employer contends that a unit solely composed of electronics technicians assigned to ships is not appropriate and that the petition should be dismissed.

The Employer, Federal Electric Corporation (hereinafter called FEC) is one of several subsidiaries of International Telephone and Telegraph Corporation performing work for the U.S. Government at Vandenburg Air Force Base and Point Arguello in California. From May 1959 to July 1, 1965, FEC had a contract with the U.S. Navy to perform tracking operations in connection with the missiles and space flight programs at Point Arguello, Pillar Point, and on range ships operating from Port Hueneme. On July 1, 1965, the Air Force took over control of Point Arguello from the Navy and the contract between FEC and the Navy was transferred to the Air Force.

¹The Petitioner's request for oral argument is hereby denied as, in our opinion, the record and briefs adequately present the issues and the positions of the parties.

As of July 27, 1965, FEC had a total of 323 electronics technicians employed at its Western Test Range project. Of these 44 were assigned to the Range Ships Department (herein referred to as RCD) and were actually aboard the range ships.² The overall supervision of all electronics technicians is in the Range Operations and Maintenance Division (herein referred to as ROMD) of which RSD is part. FEC admits not only that RSD is organizationally separate but that such separation is necessary because the port serving range ships is more than 100 miles away and because the ships are at sea during operations. Although there are one or more levels of supervision between the manager of ROMD and the technicians doing the work, the ROMD manager has responsibility for land-based and sea-going technicians and there is a manager on each ship responsible to the ROMD manager. All hiring is done by the central personnel department. Training, wages and salary, labor relations, and recruiting are handled by the central employee relations department.

The Employer utilizes identical or similar equipment in both its land and ship operations. The duties and skills required of both land and ship electronics technicians in relation to this equipment are basically the same. With respect to the electronics technicians working aboard the ship, these employees are at sea 50 to 60 percent of their time and may be away for periods as long as 4 months. The Petitioner contends that because of this the Board must consider as working conditions: living quarters, sleeping facilities, meals, drinking water, medical treatment, etc., all of which are of no interest to land-based employees.³

In addition to the above differences there are also differences in method of payment, hours of work, workmen's compensation, and fringe benefits. The normal work week for ship electronics technicians is a guaranteed 56 hours without overtime or shift premiums.⁴ They are paid at straight time with a sea bonus of 25 percent. When they are on shore, they receive the same compensation as land-based employees which is time and a half for all work performed in excess of 40 hours.

² Following the hearing which was concluded on September 17, 1965, the Employer, on January 7, 1966, filed with the Board a motion to reopen the record to introduce additional evidence that since the hearing it has hired 154 electronics technicians for 3 additional vessels—*Johnson*, *Huntsville*, and *Watertown*—thereby expanding the unit from the original 44 employees to 198 employees. While all of the new hires have been assigned to the RSD, none of them are actually aboard a range ship, but all are still in training status. The Petitioner in its response, received January 17, to the motion does not attempt to rebut the statements made in the Employer's motion but, in fact, accepts them as supporting the Petitioner's appropriate unit position. We, therefore, will consider the truth of the new evidence to be admitted and, consequently, deem it to be unnecessary to reopen the record and remand the case.

³ The Employer argues that the Petitioner is confusing working conditions with living conditions. However, it seems clear that, under such circumstances, such items would constitute subjects of bargaining. Compare, *Weyerhaeuser Timber Company*, 87 NLRB 672.

⁴ This is possible because ship board employees are not subject to the Fair Labor Standards Act.

As for workmen's compensation, they are covered by the Jones Act while at sea, rather than the Workmen's Compensation Act of the State of California which covers the land-based electronics technicians. These employees also receive free room and board while aboard ship and per diem while in ports away from home. However, all employees have the same pension plan, health and welfare plan, vacation, holiday, and sick leave benefits.

The home port for these vessels is Port Hueneme which is 100 miles from Port Arguello. Since there are no land-based electronics technicians at Port Hueneme, there is no contact between the land-based and ship employees while they are in port. While a ship is at the home port, some of the ship technicians will remain with the ship, and others will be assigned to clerical jobs at the port.

As for interchange between land-based and ship electronics technicians, the record reveals that permanent transfers *to* the ships have averaged 12 per year, while transfers *from* the ships have averaged 6 per year. In this regard it should be noted that it is quite difficult to transfer from ship to shore because of the Employer's rule that a ship technician must spend 1 year on a ship before being eligible for transfer. The Employer's witness testified that there were "numerous" temporary transfers to the range ships which were not recorded. However, there is little in the record to show any significant amount of temporary interchange. The examples of transfers which he gave appear to have been from points at which the Employer has no employees (as far as the record show) and possibly were emergency transfers of other employees involved in the space program. The only other testimony was that of a former employee who stated that during his 4 years with FEC, he spent only 2½ weeks at Vandenburg and that at the time he was hired.

Under all the circumstances of this case, we find no merit in the Employer's contention that a unit composed solely of electronics technicians working aboard the range ships is inappropriate. Section 9(b) of the Act directs the Board to make appropriate unit determinations which will "assure to employees the fullest freedom in exercising rights guaranteed by this Act." i.e., the rights of self-organization and collective bargaining. In effectuating this mandate, the Board has emphasized that the Act does not compel labor organizations to seek representation in the most comprehensive grouping of employees unless such grouping constitutes the only appropriate unit. Although it is apparent in this case that there are some factors to support a finding that a unit encompassing all electronics technicians, whether working on shore or aboard the range ships, is appropriate, it is equally clear that the electronics technicians aboard the range ships have a sufficient community of interest to justify their establishment in a bargaining

unit apart from the electronics technicians working on shore. In support of our finding of a separate community of interest for the range ships electronics technicians, we rely on the following factors: (1) the requested employees constitute a geographically separate, identifiable group; (2) the Employer treats this group both in its organizational framework and in fact as a separate group; (3) they have separate immediate supervision, and different hours and methods of payment; (4) they are not subject, while at sea, to the Fair Labor Standards Act and the Workmen's Compensation Act of the State of California; (5) they receive free room and board aboard ship and per diem while in ports away from home; (6) they are subject to all the problems that beset ordinary sea-going personnel; (7) they have no contact with on-shore employees; (8) the record does not show a frequency of temporary interchange; and (9) no labor organization is seeking to represent all the electronics technicians of the FEC.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electronics technicians of the Employer working aboard ships⁵ of the Range Ships Department located at Port Hueneme, excluding electronics technicians working on shore, office clerical employees, guards, and supervisors as defined in the Act.⁶

[Text of Direction of Election^{7 8} omitted from publication.]

⁵ The electronics technicians who are assigned to the Range Ship Department, but are presently in training status, are included in the unit held to be appropriate since they have a reasonable expectation of substantial future employment aboard ship and, therefore, have a sufficient interest in the terms and conditions of employment for ship-based electronics technicians.

⁶ The Employer in its brief argues that the petition should also be dismissed because, under a planned merger with Base Service, Inc., also a subsidiary of I.T.T., which performs electronic work at Vandenberg Air Force Base, FEC should be treated as an accretion to Base Service, Inc., and BSI's contract with the IBEW should act as a contract bar to the petition in this case. We reject this contention because such a contemplated change is either speculative or dependent on facts which are uncertain at present.

⁷ In view of the expansion of the unit since the filing of the petition, we find that the showing of interest does not meet our requirements as to substantial representation. Accordingly, the direction of election herein is made subject to the submission by the Petitioner to the Regional Director, within such time as he shall determine, of an adequate showing of interest among the employees in the unit as of the date of the issuance of this Decision and Direction of Election. See *Brown and Root Caribe, Inc.*, 119 NLRB 815.

The International Brotherhood of Electrical Workers, AFL-CIO, and its Local No. 336, were permitted to intervene in this proceeding on the basis of their colorable contractual interest. As the Intervenor's contract does not cover the employees in the unit found appropriate, and as they have not submitted any showing of interest among such employees, we shall not place their names on the ballot in the election directed herein.

⁸ An election eligibility list, containing the names and address of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelstor Underwear Inc. and Saluda Knitting Inc.*; 156 NLRB 1236.