

writing that it will comply with the foregoing Recommendations, the National Labor Relations Board shall issue an Order requiring the Respondent to take the action aforesaid.

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 157, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT strike or encourage the employees of Modern Housing Facilities Inc., Roach Plumbing and Heating, Uesry and Sims, Prose Electric, or any other employer engaged in the final assembly of prebuilt housing units manufactured by Midwest Homes, Inc., to engage in a strike or a concerted refusal in the course of their employment to perform services when an object thereof is to force or require Midwest Homes, Inc., to assign the plumbing work performed in its prebuilt housing units at Carlisle, Indiana, to our members rather than to employees of Midwest Homes, Inc., who were not members of our labor organization unless Midwest Homes, Inc., fails to conform to an order certifying us as the bargaining representative of the employees performing such work.

LOCAL 157, UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUS-
TRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 633-8921.

Western Gear Corporation, Heavy Machine Division and Local No. 8, Office and Professional Employees International Union, AFL-CIO, Petitioner. *Case 19-RC-3870. July 28, 1966*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held at Seattle, Washington, on March 9 and 22 and April 5 and 6, 1966, before Hearing Officer John D. Nelson. Thereafter, the Petitioner and Employer filed briefs. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, including the briefs, 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.¹

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. *The appropriate unit:*

The Petitioner's unit request is limited to office and plant clericals. The Petitioner expressly does not seek to include any employee classifications that may be found to be technical.

The Employer agrees on the appropriateness of a clerical unit, but contends that if certain classifications it considers to be technical are included in the unit as requested by the Petitioner, all technicals with a sufficient community of interest should be included. The Employer's request for the inclusion of certain technical employees it urges have a community of interest with others sought is thus conditional only.

Since Board precedents support and the parties agree upon the appropriateness of a unit limited to clericals and excluding technicals, we find it unnecessary here to explore the extent to which another unit including technical employees might also be appropriate on the basis of the principles laid down in *The Sheffield Corporation*, 134 NLRB 1101. We limit our consideration here, therefore, to the issue contested: whether the disputed categories are clerical or technical.

The parties stipulated, and we find, that nine named classifications are properly includable in the clerical unit.² The parties do not agree on whether certain other classifications should be included in the unit. The Petitioner contends that the clerical unit should also include accountants, blueprint machine operators, coordinators, dispatchers, and schedulers, classifications which the Employer would exclude as technical and not clerical. The Employer would also include in the clerical unit three buyer classifications, application engineers, contract administrators, and draftsmen. The Petitioner would exclude the buyer classifications, primarily as managerial, and the latter categories as technical.

¹ International Association of Machinists and Aerospace Workers, Lodge No. 130, AFL-CIO, which represents the Employer's production and maintenance employees, was allowed to intervene in this proceeding on the basis of a showing of interest.

² The agreed-upon classifications are as follows: accounting clerks, senior tabulating machine operators, clerk-typists, keypunch machine operators, general clerks, switchboard operator-receptionists, stenographers, receiving clerks, and senior clerks.

The employees, in both the agreed-upon and disputed classifications, are practically all employed in five of the Employer's departments, located on two floors of a single building at its Everett plant. The functions they perform are generally supportive of the Employer's manufacturing operations. The dispatchers' and schedulers' duties also require their periodic presence in particular areas of the plant, to assure continuity of manufacturing, and to make certain that delivery schedules on projects are met.

The task of determining whether employees, whose duties are related to the production and manufacturing function in a plant of the type here involved, are plant clerical employees or technical employees is at times difficult. Generally, however, those held to be technical employees are employees who do not meet the strict requirements of the term "professional employee" as defined in the Act, but whose work is of a technical nature, involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses. Where employees have interests and working conditions similar to those of production employees, but do not perform work of a technical nature, or possess specialized training or exercise independent judgment in performing their duties, they are usually found to be plant clerical employees.³ Bearing the above distinguishing characteristics of plant clerical and technical employees in mind, the classifications in dispute are discussed below by department.

The Employer would exclude from the unit as technical employees four accountants, whom the Petitioner claims perform only routine clerical duties. It is contended by the Employer that the educational training of these employees, and the independent nature of the judgments they make, qualify them as technical employees. Two of the accountants perform cost accounting functions, while the others handle accounts payable and receivable and credit matters; and all are subject to supervision by a chief accountant, who in turn reports to the Employer's comptroller. The only accountant to testify, Slack, a cost accountant, whose duties the evidence shows are also typical of the remaining 3 accountants, described his own work as recurrent and routine. None of the accountants are certified, although two are college graduates who majored in accounting. The others lack extensive education in accounting, although one has had considerable experience in his present accounting position. Although the evidence concerning these accountants shows that their weekly earnings range from about \$120 to \$180, it does not in our opinion show that they customarily use specialized educational training regularly to make

³ *The Sheffield Corporation*, 134 NLRB 1101; *Litton Industries of Maryland, Incorporated*, 125 NLRB 722, 724.

the kind of independent judgments which would qualify them as technicals. Accordingly, as we find that they perform only clerical duties, we shall include the accountants in the unit.⁴

The Employer seeks to include the classification of application engineer in the marketing department, contending that the employee employed in that category performs only a routine clerical function with respect to incoming invitations for bids, assigning them a number and processing them before bids are prepared. The Employer's chief engineer, however, concedes that this position is presently filled by Borst, a graduate engineer who screens bid invitations to determine if they concern projects of a nature that the Employer is qualified to bid on and manufacture. Borst refers to and discusses with the engineering department invitations that he deems suitable, and sends to the inquiring firm letters of quotation which he prepares. The application engineer receives a salary between \$600 and \$700 per month. We find, on the basis of the above evidence that the classification of application engineer is at least a technical one, in view of the application engineer's educational qualifications, his substantial contacts with the engineering department, and the independent judgment we find he exercises in analyzing a wide variety of bid invitations, and referring selected ones to the engineering department. Accordingly, we shall exclude this classification from the clerical unit.⁵

The Employer seeks to include in the unit three classifications in its purchasing department: namely, buyer, buyer follow-up, and outside buyer follow-up, contending that the purchasing of materials for its manufacturing operations by the employees assigned to these classifications, is a routine clerical function, performed in accordance with departmental requests which specify the needed materials or shop supplies. The evidence shows, however, that the buyer has discretionary authority to pledge the Employer's credit up to \$5,000. The buyer follow-up, while presently performing some clerical duties, is also given responsibility for the preparation of purchase orders involving the Employer's credit. The evidence also shows that he bears a trainee relationship to the buyer. The two outside buyers follow-up expedite delivery of materials to the Employer, but spend practically all of their time performing this function away from the Everett plant. The buyer and outside buyers follow-up receive monthly salaries in the \$600 to \$700 range, while the hourly earnings of the buyer follow-up are about \$500 per month. On the basis of the above evidence which manifests the exercise of managerial responsibility by the buyers we exclude them and the buyer follow-up,

⁴ *Westinghouse Air Brake Company*, 119 NLRB 1391, 1393.

⁵ *Ladish Company*, 126 NLRB 555, 558.

whom we find to be in a trainee status, from the unit.⁶ The outside buyer follow-up category is also excluded from the unit as it is apparent that employees in this category lack a sufficient community of interest with the plant employees to be included in the office and plant clerical unit⁷ in view of their almost continuous absence from the plant.⁸

The Employer in its brief urges that four contract administrators in its marketing, and contract administration departments should be included in the unit because they merely perform routine clerical functions in dealing with other companies. But the only relevant testimony cited in the brief itself, in the discussion of the duties of schedulers and planners, convinces us that contract administrators consistently utilize fundamentally technical knowledge and training in handling contract relations with the Employer's customers and that their duties in this regard do require the use of independent judgment. Accordingly, we find that the contract administrator classification should be excluded from the unit as a technical category.

In the production control department the Petitioner would include in the unit schedulers and dispatchers, contending that the evidence shows that employees in both these classifications, at most, expedite production, either at a single plant location, where a dispatcher is ordinarily assigned; or throughout the plant, where schedulers normally exercise a project responsibility; and that schedulers and dispatchers do not exercise the independent judgment or have the education or training usually possessed by technical employees. The Employer contends that the evidence shows that dispatchers and schedulers possess the requisite qualifications for exclusion from the unit as technical employees and that employees in both classifications utilize the type of independent judgment which technical employees exercise.

As regards education and training, the schedulers and dispatchers as a group have an adequate amount to qualify as technical employ-

⁶ *Federal Television and Radio Company*, 120 NLRB 1652, 1653.

⁷ *Federal Television and Radio Company*, *supra*, at 1655.

⁸ The record establishes that the buyer has discretionary authority to pledge the Employer's credit only on those apparently infrequent occasions when the purchasing agent is not available, and it appears from the record that the buyer's duties are largely clerical in nature. Member Zagoria would therefore include the buyer, and *a fortiori* the buyer follow-up, in the clerical unit. The evidence concerning the outside buyers-follow-up consists largely of testimony by the buyer. It appears from such testimony that as of the time of the hearing one of the outside buyers-follow-up was spending 2 days each week working at the plant and the other was expected to return shortly from a field trip; the witness was, however, apparently not familiar with the work of the former while in the plant and not privy to management's plans for the latter upon his return. In addition, the record fails to reflect sufficiently the overall division of time of these employees between in-plant and out-plant duties, or the nature of their in-plant duties. In view of all these circumstances, Member Zagoria would permit the outside buyers-follow-up to vote subject to challenge.

ees. Thus, the evidence reflects 100 hours formal training in Army Engineering School in the case of one scheduler, and 2 years in engineering in a junior college in the case of another. Other schedulers and dispatchers have training in engineering and mechanical drawing, as well as relevant technical on-the-job training. The scheduler receives a monthly salary ranging from \$600 to \$725, while the total monthly hourly earnings of a dispatcher approximate \$500. We find adequate evidence that the schedulers regularly exercise independent judgment, which utilizes their educational training and experience in important phases of the Employer's heavy manufacturing operations. They must have a knowledge of different types of steel and castings, and the various operations performed by numerous intricate machines, and then regularly use this knowledge in scheduling production work. Also, using the same data, schedulers can, where a particular manufacturing machine becomes overloaded, direct particular work shifted to other machines, which perhaps will perform the required operation less efficiently than the most desirable machine to which the work could be assigned, but nevertheless will speed a particular project to completion. This authority to control the production load at particular manufacturing locations in the plant, and to make prompt arrangements to compensate for any overload which may result from assignments by other schedulers, requires the use of independent judgment, and appears essential to enable the Employer to meet its delivery commitments. In addition, schedulers check the manufacturing orders prepared by planners to see that they conform to the relevant engineering drawings before scheduling a particular project for production. It also appears from the evidence that schedulers are responsible for seeing that a major machinery set-up is not completely disassembled and rebuilt if it can instead be modified to handle forthcoming projects. On the basis of the above evidence, we conclude that the schedulers' duties are more complex and responsible than those of ordinary production expeditors, and we find that this classification is a technical one requiring the use of considerable independent judgment. Accordingly, we shall exclude schedulers from the clerical unit.⁹

The record shows that schedulers have in the past, during some periods, been assigned as dispatchers to a particular plant location, where they have had no basic responsibility other than to assure expeditious manufacturing of items and projects reaching their assigned stations. They then functioned only as ordinary production expeditors in their assigned areas. We include employees who may still be

⁹ *Copeland Refrigeration Corporation*, 118 NLRB 1364, 1366.

performing such duties in this classification in the office and plant clerical unit defined herein.¹⁰

The Employer also urges that an hourly coordinator who is assigned to the production control department and whose principal duty is to maintain an adequate inventory of material and parts at the Employer's plant should be excluded from the unit as a technical employee. The evidence shows, however, that the coordinator is able to formulate most of his requests for necessary material and shop supplies on the basis of information previously supplied to him by the various departments of the Employer. Moreover, while the present coordinator has had some courses in production-metal casting, his principal educational background is in general business courses, accounting methods, analysis, and sales. The coordinator is hourly rated, earning between \$2.50 and \$3 per hour. On the basis of the above evidence we conclude that the coordinator does not qualify as a technical employee. We find that his duties are primarily clerical, and we shall include him in the unit defined herein.

The Employer would exclude blueprint machine operators in the engineering department, contending that they are technical employees (or that at least their duties relate closely to the engineering department). However, the evidence shows that their principal duties are to utilize copying machines to reproduce engineering drawings and blueprints, and route the copies to various departments of the Employer, which need to consult them, either during manufacturing or in dealing with customers. There is a lack of evidence supporting the contention that the blueprint machine operators are technical employees, although it is true that in some past cases where blueprint machine operators' functions were limited to serving personnel performing engineering duties they have been placed in units with engineers. In the present case, however, as the distribution function performed by the blueprint machine operators serves several non-engineering departments of the Employer, and as they have none of the qualifications of technical employees, we shall include them in the office clerical and plant clerical unit as the Petitioner requests.¹¹

Finally, the Employer contends that draftsmen in its engineering department merely perform clerical functions, and do not qualify as technical employees as Petitioner contends. We find no merit in this contention of the Employer, as its own exhibits reflect that the draftsmen have adequate education and training to qualify as technical employees. Even draftsmen in the lowest skilled category have had

¹⁰ *Kearney & Trecker Corporation*, 121 NLRB 817. However, employees who exercise duties requiring judgments of the independent and responsible type now made by schedulers, either at particular work stations, or throughout the plant, are excluded from the unit as technical employees.

¹¹ *Allis-Chalmers Manufacturing Company—Pittsburgh Works*, 128 NLRB 87, 89.

training in engineering in junior colleges and engineering institutes. The draftsmen prepare detailed drawings of components and assemblies using layouts and instructions received from design engineers. However, it is clear that they use trigonometry, geometry, and a wide variety of technical symbols in their work, exercise discretion in drawing mating parts, and in some instances determine whether certain parts should be machined or fabricated. On the basis of the above evidence, we find that the draftsman classification should be excluded as a technical one.¹²

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

All office clerical and plant clerical employees of the Employer's Heavy Machine Division plant, Everett, Washington, including accountants A, accountants B, accounting clerks, senior tabulating machine operators, clerk-typists, keypunch machine operators, general clerks, switchboard operator-receptionists, coordinators, dispatchers, stenographers, receiving clerks, blueprint machine operators, and senior clerks, but excluding application engineers, contract administrators, estimators, field service representatives, buyers, buyers follow-up, outside buyers follow-up, schedulers, planners, tool designers, draftsmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]¹³

¹² *Litton Industries of Maryland, Incorporated*, 125 NLRB 722, 725

¹³ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 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. *Excelsior Underwear Inc.*, 156 NLRB 1236.

J. C. Penney Co., Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452

J. C. Penney Co., Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 452, Petitioner. Cases 27-CA-1769, 1821, and 27-RC-2773. July 29, 1966

DECISION AND ORDER

On March 16, 1966, Trial Examiner David Karasick issued his Decision in the above-entitled proceeding, finding that the Respondent
160 NLRB No. 26.