

Crucible Steel Casting Division of Howmet Corporation and Local Union, No. 85, United Steelworkers of America, AFL-CIO.
Case 30-UC-21. February 8, 1967

**DECISION AND ORDER DENYING PETITION
TO CLARIFY CERTIFICATION**

On September 9, 1966, the Petitioner, which has been the contractual representative of a unit of the Employer's employees since it was certified by the National Labor Relations Board in 1946,¹ filed a petition to clarify the unit to include the category of Brinell testers. On October 10, 1966, a hearing was held before Hearing Officer Wallace Taine for the purpose of taking testimony with respect to issues raised by this petition. All parties appeared and participated at the hearing. Thereafter, all parties filed briefs. On November 1, 1966, the Regional Director issued an order transferring this case to the Board.

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

The Board has considered the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

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

The Employer is a Wisconsin corporation engaged in the manufacture of steel castings at Milwaukee, Wisconsin. The Petitioner was certified in 1946 as the representative of a unit of foundry workers, moulders, coremakers, and helpers, excluding office employees, foremen, and all supervisors. In 1951 the contract unit description was changed to designate a unit of production and maintenance employees, excluding watchmen, guards, timekeepers, checkers, timestudy employees, ratesetters, shop production and factory clerical employees, chief stockkeeper, head melters, office employees, technical engineers, salesmen, superintendents, assistant superintendents, supervisory inspectors, technicians, head shipping clerks, nurses, chemists, metallurgists, personnel director, assistant personnel director, foremen, assistant foremen, and other supervisors. The parties have entered into several collective-bargaining agreements since 1951 which, including the current agreement, have contained the 1951 unit description.

Neither the certified nor the contractual unit makes reference to Brinell testers, although the record shows that the work of Brinell testing, which involves determining the hardness of castings, was

¹ 68 NLRB 143.

originally performed by a metallurgist, and, by 1950, had increased to an extent that required full-time work by three or four employees. The record also shows that the Petitioner has not represented employees in this category, and, in fact, the Petitioner, which has represented a unit of hourly paid employees, does not allege that it ever represented the Brinell testers, who are salaried.

The Petitioner contends that the Brinell testers are covered by the unit description and should therefore be expressly included by the Board. The Employer urges dismissal of the petition on the grounds that: the function performed by these employees has existed since before the certification in 1946; the employees engaged in this work have never been represented by the Petitioner; these employees are not includable because they lack a community of interest with the employees in the unit; and, in any event, the inclusion of Brinell testers in the unit after so many years of bargaining history which did not cover them should be only pursuant to a self-determination election.

In view of the foregoing, and bearing in mind particularly that the function of Brinell testing was in existence at the time of the certification in 1946, that neither the certification nor any contract since 1946 included these employees in the unit description, and that the Petitioner has made no effort to represent these employees until 20 years after the certification, we find that the petition for clarification raises a question concerning representation which may not be resolved through a clarification of the existing unit. The proper procedure is a petition pursuant to Section 9(c) of the Act seeking an election.² We shall therefore grant the Employer's motion that the Petitioner's petition be denied.³

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

² *Beaunit Fibers, Inc.*, 153 NLRB 987.

³ In view of our disposition of this matter, we find it unnecessary to pass upon the Employer's contentions that the Brinell testers are supervisors, or that they lack a sufficient community of interest to be included with the unit employees.

Joseph Madruga and Duarte R. Madruga, a partnership, d/b/a MV Dominator and Cannery Workers & Fishermen's Union of San Diego, affiliated with the Seafarers' International Union of North America, AFL-CIO, Petitioner. Case 21-RC-10147. February 8, 1967

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 before Hearing 162 NLRB No. 134.