Dawes Laboratories, Inc., Employer *and* Lucia M. Howard, Individual-Petitioner *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO

Dawes Laboratories, Inc., Employer-Petitioner *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO.
Cases 13–RD–690 and 13–RM–871.

May 23, 1967

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hyman Bear, Hearing Officer. 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's Rules and Regulations, and by direction of the Regional Director for Region 13, this case was transferred to the Board for decision. A brief has been filed by the Employer.

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.

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 organization involved claims to represent certain employees of the Employer. In Case 13–RD–690, the Petitioner, an employee of the Employer, asserts that the Union no longer represents a majority of the Employers quality control employees.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

On December 13, 1965, the Employer and Union entered into a stipulation for certification upon consent election in Case 13–RC–10761 for a production and maintenance unit excluding, *inter alia*, laboratory technicians.[1] The Union won the election and was certified by the Board as representative of such employees on January 13, 1966. On April 25, 1966, the Employer and Union entered into a 1-year collective-bargaining agreement covering the employees in the certified unit. The contract provided that it would be automatically renewed from year-to-year unless either party gave written notice of modification or termination at least 60 days prior to April 24 of the year that a change was sought.

On April 15, 1966, the Union filed a petition in Case 13–RC–10868 for an election in a unit of the Employer's laboratory technicians, excluding all other employees. On May 20, 1966, the Regional Director issued a Decision and Direction of Election finding that these employees were not technical employees[2] and could be included in the production and maintenance unit and ordered an election in a *voting group* consisting of all quality control employees, excluding supervisors and all other employees.[3] The Decision and Direction of Election further stated that depending on the outcome of the vote, the election would have either of the following alternative consequences:

> If a majority of the employees in the voting group vote to be represented by the Petitioner, *they will be taken to have indicated a desire to become part of the production and maintenance unit* currently represented by the Petitioner, *and an appropriate certification will issue;* if they vote against the Petitioner, they will remain unrepresented, and a certification of results will issue. (Emphasis supplied.)

A majority of the employees in the voting group voted for the Union and despite the statement in the Decision and Direction of Election that "an appropriate certification will issue," the Regional Director, on June 30, 1966, certified the Union as the exclusive representative in a unit consisting of all quality control employees. Following the issuance of that certification, no party attempted to file any petition or motion with the Regional Director to correct or amend the certification.

After the issuance of the certification, the Employer and Union entered into negotiations concerning the quality control employees. On August 11, 1966, the Employer sent a letter to Tyler Swanson, representative for the Union, stating, *inter alia*, "In view of the few employees involved and the fact that the Chicago Heights plant agreement has considerably less than a year to run, we should handle the matter of the laboratory technician through a simple letter agreement incorporating by reference applicable provisions of the plant

[1] The categories of laboratory technician and quality control employees are identical and will be used interchangeably in the Decision as referred to by the parties and documents The Union had sought to include quality control employees in the unit, but at the stipulation conference the Employer demanded that they be excluded and the Union acquiesced

[2] The Regional Director rejected the Employer's contention that these employees were technical employees who did not have a community of interest with the production and maintenance employees.

[3] The Regional Director subsequently amended his Decision to specifically exclude the production control supervisor

agreement." Enclosed with the letter was a copy of the proposed agreement in the form of a letter which stated that the Employer recognized the Union as the "sole collective bargaining agency for all quality control employees (laboratory technicians) at the Company's plant in Chicago Heights, Illinois, excluding supervisors and all other employees." The letter further said that all of the provisions of the agreement between the Employer and the Union dated April 25, 1966, with respect to the production and maintenance employees shall be applicable to the quality control employees except as otherwise provided in the letter. The parties reached a final agreement dated September 12, 1966, which contained substantially the same terms as were contained in the proposed agreement of April 11. The provisions applying specifically to the quality control employees included a separate seniority group, a slightly different grievance procedure,[4] a less strict rule with regard to supervisors performing quality control work than that which existed with regard to work in the plant, and a separate classification and rate structure for the quality control employees. The expiration date and renewal provisions were incorporated from the previous agreement.

The RD petition in the instant case was filed on February 6, 1967, seeking an election in a unit of all laboratory technicians at the Employer's plant located at Chicago Heights, Illinois, and the RM petition was filed on February 15, 1967, seeking an election in a unit of all quality control employees at the Employer's plant at Chicago Heights, Illinois. On February 20, 1967, the Union sent a letter informing the Employer that it wished to terminate "this Agreement." Also on February 20, the Employer sent a letter to the Union notifying it that the Employer desired to terminate the agreement dated September 12, 1966, involving the quality control employees. On March 3, 1967, the Employer sent a letter to the Union acknowledging the Union's letter of February 20 and expressing its willingness to meet and bargain with the Union concerning the bargaining unit certified in Case 13–RC–10761, which included only the production and maintenance employees.

The Employer contends that the RD and RM petitions were timely filed as they were filed more than 60 and less than 90 days from the expiration date of the agreement covering the employees named in the petitions. The Employer further contends that the unit in which both petitions seek an election is the appropriate unit, for it conforms to the unit certified by the Board on June 30, 1966, in Case 13–RC–10868. The Individual Petitioner similarly took the position that the election should be held in the unit of quality control employees.

The Union contends that the unit in which the elections are sought is inappropriate inasmuch as the unit of quality control employees as certified in Case 13–RC–10868 is part of and has been included in the unit certified in Case 13–RC–10761 which includes all hourly production and maintenance employees. The Union further contends that the petition has been untimely filed. The Union argues that by the letter of August 11, 1966, stating that the laboratory technicians should be handled through a simple letter agreement incorporating by reference applicable provisions of the plant agreement, and by the proposed letter agreement of August 11 and the signed letter agreement of September 12, 1966, stating that the provisions of the agreement between the Company and Union dated April 24, 1966, with respect to the production and maintenance employees shall be applicable to the laboratory technicians except as otherwise specifically provided, the Company has agreed that the quality control employees were included and incorporated with the production and maintenance employees into one bargaining unit. Swanson testified that Cameron Gillingham, personnel director for the Employer, told him, in effect, that the letter agreement covering quality control employees only, rather than a new agreement covering all employees represented by the Union, was executed merely for convenience and that they would discuss the matter at the expiration of the contract and at that time write a new contract.

The Employer argues that the language of the agreement covering the quality control employees indicates that the parties did not intend their letter agreement to serve as a temporary device pending later negotiations of an agreement covering an overall unit, but intended it rather as a separate agreement covering a unit of employees which the parties considered to be separate and distinct from production and maintenance employees. Gillingham testified that he assumed that the agreement made was to cover the laboratory technicians and that no consideration was given to executing a new document that would incorporate both groups in one unit.

Whether or not the agreement of September 12, 1966, be viewed as reflecting the parties' intention to include the quality control employees in the production and maintenance unit, we find that the petitions must be dismissed.

The tenor and thrust of the Regional Director's Decision and Direction of Election in Case 13–RC–10868 was to the effect that the

[4] This provision specified that the quality control and new feed products manager rather than the plant superintendent shall act for the Company in step 3 of the grievance procedure in the handling of grievances involving laboratory employees The record indicates that the plant grievance committee, comprised solely of production and maintenance employees, has handled grievances for the Union on behalf of the quality control employees

Employer's quality control employees shared a community of interest with employees in the production and maintenance unit and they were not technical employees and did not constitute a separate appropriate bargaining unit. Accordingly, the Regional Director directed an election in a voting group—not an appropriate unit—of quality control employees, and found that if they voted for the Union they would become part of the production and maintenance unit. The quality control employees did vote for the Union, and we find that they thus became part of the overall production and maintenance employee unit. The fact that through inadvertence or error the certification issued by the Regional Director did not accurately and wholly reflect this fact cannot alter its controlling importance for purposes of deciding this case; nor do we see how it can possibly have prejudiced the parties hereto. For the basic function of the certification was to certify the Union as the representative of the quality control employees, and the Union has acted, and has been treated by the Employer, as such representative. Moreover, there has been no showing that the particular form of the collective-bargaining agreement covering these employees was dictated by the form of the certification. Accordingly, we find that the quality control employees constitute only a segment of an existing appropriate bargaining unit and we shall therefore dismiss the petitions.

In order to eliminate the confusion stemming from the form of the certification issued in Case 13–RC–10868, and to conform such certification to the Decision and Direction of Election in that case, we shall direct the Regional Director to vacate the certification issued therein and to issue a certification more appropriate to the results of the election conducted therein.

ORDER

It is hereby ordered that the petitions filed herein be, and they hereby are, dismissed.

IT IS HEREBY DIRECTED that the Regional Director vacate the Certification of Representative issued on June 30, 1966, in Case 13–RC–10868, and that he issue a certification appropriate to the results of the election therein.