

Allied Chemical Corporation, National Aniline Division, Employer and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Case 3-RC-3382

June 9, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN, JENKINS, AND FANNING

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Arthur E. Neubauer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹ Following the hearing, this case was transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Subsequently, the Employer filed a brief with the Board which has been duly considered.²

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

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

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:³

The Petitioner seeks an election in a unit of all carpenters working at the Employer's Buffalo, New York, plant. It would sever that unit from a broader unit of production and maintenance employees currently, and for about 22 years, represented by the Intervenor. The Employer and the Intervenor oppose severance, relying mainly on the highly integrated nature of the plant's operation and urging as additional reasons against severance the long and successful bargaining history in the existing production and maintenance unit and the community of interest shared by the carpenters with other hourly paid employees in that production unit.

The Employer is engaged at its Buffalo plant in the manufacture of industrial chemicals, including dyestuffs, used primarily for textile, plastic, and food

coloring, and synthetic organic chemicals, some of which are used in the national defense missile program. The production of these chemicals and dyestuffs involves a series of chemical reactions encompassing a number of steps requiring the movement of intermediate compounds from building to building within the Employer's manufacturing complex by means of approximately 10 miles of pipeline and in containers.

The record shows that although the Employer has divided its Buffalo operation into six distinct areas representing various stages in the production process, each of these areas is dependent for its successful operation upon the performance of the others. Thus, the manager of one of these areas, plant area E, testified that the safety and economy of the operation require that the stages in the production process from raw material to final product progress uninterruptedly. A breakdown in one stage will delay all prior and subsequent phases of the round-the-clock, 7-day-a-week operation, and, due to the highly volatile and flammable nature of many of the component chemicals, may increase the danger of explosion.

The current collective-bargaining agreement divides the hourly paid employees into two major groups—"operating" and "mechanical or trades." The carpenters are designated "mechanical or trades" employees.

Work performed by the carpenters includes the installation, repair, and fabrication of buildings, equipment, and accessories made of wood or wood substitutes. In this work they use carpenters' hand and shop tools and machines. The collective-bargaining agreement describes a tradesman, including a carpenter, as an employee who is "skilled and experienced in a trade requiring an extensive period of training and practice" and as being "capable of executing without close supervision the layout, fabrication, and installation of his trade."

Record evidence establishes that there is considerable contact between carpenters and production employees. Almost all of the carpenters' work is performed in production areas of the plant and in close cooperation with operating personnel. For example, when it is necessary to make certain repairs on rubber or enamel parts, or to install wood filters, the carpenters work on the job with production employees. In emergency situations, where highly explosive chemicals may be involved,

¹ The Employer has appealed to the Board from certain adverse rulings by the Hearing Officer on the introduction of additional evidence. In view of our decision herein, we find it unnecessary to rule on the Employer's appeal.

² District 50, United Mine Workers of America, Local 12330, intervened at the hearing on the basis of its contractual interest. Thereafter, on June 15, 1966, the Intervenor filed a motion to dismiss the petition, contending that the Petitioner no longer commands the requisite showing of interest in the requested unit.

As a showing of interest is determined administratively and is not litigable, this motion is hereby denied.

³ The Employer's motion for oral argument before the Board is hereby denied because the entire record in this case, including the Employer's brief, adequately sets forth the issues and positions of the parties. We also deny for the same reason the motion of the Manufacturing Chemists Association requesting, *inter alia*, permission to file a brief *amicus curiae*.

carpenters frequently work together with operating employees to repair mechanical defects.

Although there is a central carpentry foreman who assigns them work, the carpenters are also supervised by operating supervisors who direct the work of production employees. Thus, carpenters must receive from an operating supervisor a "line breaking permit" or a "tank entry permit" indicating that a line or tank is safe and free from harmful solvents or gases before they can perform certain required work. There is also a considerable amount of overlap between the duties of the carpenters and those of other plant employees. For instance, H. I. Russell, general superintendent of mechanical power and plant engineering, testified that a certain job is done by "labor B" production employees as well as by carpenters. It further appears that craftsmen, including carpenters, are assigned to production tasks during times when insufficient craft work is available. This is specifically provided for by the current labor agreement which states that "when the work involved falls outside the scope of any of the following trades [including carpentry] when qualified tradesmen are available, they may be assigned to perform said work at the Company's discretion."

In addition to working in close proximity to, and substituting for, production employees, the carpenters receive the same fringe benefits and use the same employee facilities as the hourly paid plant employees.

Since 1942, the vast majority of hourly paid employees at the Buffalo plant, including carpenters, have been included in the plantwide production and maintenance unit represented by the Intervenor. The Petitioner, however, currently represents two separate bargaining units: one a unit of sheet metal workers and the other a unit of garage mechanics and shop machinists.⁴ At one time, the Petitioner had also separately represented two other craft groups—pipefitters and scale mechanics. The pipefitters, however, in 1955 voted to rejoin the production and maintenance unit and, in 1963, the scale mechanics also did so.

Besides the carpenters, pipefitters, and scale mechanics, the overall production and maintenance unit includes other skilled tradesmen such as electricians, brickmasons, welders, field machinists, power engineers, boilermakers, and blacksmiths.

There is no evidence that the bargaining interests of the carpenters or other craftsmen have been neglected or prejudiced by virtue of their representation in the overall unit; their wage rates

which are higher than those prevailing for the great majority of noncraft employees reflect recognition of their greater skills.

In 1953, in *National Aniline Division, Allied Chemical and Dye Corporation*, 102 NLRB 129, 132-133, the Board directed a severance election, *inter alia*, in a unit of carpenters and apprentices at this plant, in which separate representation was rejected. The Petitioner contends that this decision constitutes binding precedent. However, in this 1953 decision the Board considered only whether the requested employees were craftsmen. Recently, in *Mallinckrodt Chemical Works*, 162 NLRB 387, we revised the principles applicable to craft severance petitions and indicated that we would weigh, on a case-by-case basis, *all* relevant factors, including the extent to which the employees in the proposed unit have established and maintained their separate identity during their inclusion in the broader unit, the degree of integration of the employer's production processes, and the extent to which the successful operation of these processes is dependent on the assigned functions of the requested employees.

Upon reviewing the facts in this case, we conclude that it will not effectuate the purposes of the Act to allow disruption of the production and maintenance unit by permitting the Petitioner to represent a separate unit of carpenters. Despite the fact that the carpenters are craftsmen, they do nearly all of their work in production areas of the plant where they may work jointly with, or substitute for, operating personnel and where they may be supervised by individuals who also supervise production employees. The work of the carpenters is important to the continuous flow of production processes used in the handling and making of various chemical end products, and helps to reduce the potential hazards that could result from an interruption in the flow of materials.

In light of the carpenters' close functional integration in the plant's operations, their community of interest with operational personnel in the production and maintenance unit, and their 22-year inclusion in that unit, and in the absence of any compelling countervailing considerations, we conclude that the unit sought by the Petitioner is inappropriate. Accordingly, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁴ One of the Board's principal considerations, stated in *American Potash & Chemical Corp.*, 107 NLRB 1418, for deciding craft severance cases was whether the union requesting severance was the traditional representative of the craft employees sought. In *Mallinckrodt Chemical Works*, 162 NLRB 387, the Board retained this consideration among others also to be weighed. The Petitioner contends here that as the traditional

representative of carpenters it has satisfied one of the prerequisites for severance. We note, however, that the Petitioner cannot claim that it has devoted all its attention to representing the special interests of carpenters, or that it has represented them exclusively, as it has represented other employees than carpenters at the here-involved plant.

MEMBER FANNING, dissenting:

I dissent from my colleagues' decision to deny the carpenter-craftsmen involved in this case an opportunity to select the Carpenters Union as their collective-bargaining representative. All of the carpenters in this case work solely as carpenters. They install, repair, and fabricate buildings, equipment, and accessories out of wood or wood substitutes. In performing such work, the carpenters use hand and shop tools and machines and perform all work commonly performed by carpenters. Carpenters at this plant must undergo extensive apprenticeship training, and all parties acknowledge that the carpenters are craftsmen "who are skilled and experienced in a trade requiring an extensive period of training and practice" and are "capable of executing without close supervision the layout, fabrication and installation of [their] trade."⁵ Carpenters work out of a central shop and all their work is assigned by the carpenter foreman and is carried out under his direction. There is no interchange between carpenters and other crafts or production employees. Carpenters work only on the day shift although the production workers work on a round-the-clock basis.

The plant involved herein has had a long history of craft elections. The sheet metal workers and the garage mechanics and machinists are presently represented in separate units. In the past, the pipefitters and the scale mechanics have been represented separately, although both groups are now part of the production and maintenance unit. There is absolutely no evidence that this history of

severance elections and separate representation for craftsmen has in any way obstructed the efficient operation of the Employer's complex and complicated production processes. In view of the fact that the carpenters work only on the day shift, even though the production process continues around the clock, it is apparent that the presence of carpenters is not a necessary condition to the continuous efficient and safe functioning of the Employer's continuous flow production process, even though the work they do undoubtedly contributes to the orderly functioning of that process.

The foregoing facts demonstrate beyond doubt that, notwithstanding their inclusion in the production and maintenance unit for the past 22 years, the carpenters constitute a functionally distinct group of craft employees with a clearly defined community of interest separate from that of other employees in the existing unit. In these circumstances, my colleagues' conclusion that the carpenters may not constitute a separate appropriate unit, if they so desire, seems to me to be an obvious departure from their oft-stated policy of deciding these cases on a case-by-case basis rather than on the basis of a mechanically applied preference for or against craft severance.

As I believe the facts in this case dictate a conclusion contrary to that reached by my colleagues, I dissent from their refusal to grant the carpenters an opportunity to seek separate representation at the hands of a union peculiarly qualified to represent their interests.

⁵ The carpenters are so described in the collective-bargaining agreement between the Employer and the Intervenor.