

**A. O. Smith Corporation, Employer-Petitioner and Smith Steel Workers, Directly Affiliated with Local Union 19806, AFL-CIO, Petitioner<sup>1</sup> and Technical Engineers Association, Petitioner.<sup>2</sup> Cases 30-UC-23, 30-UC-24, 30-UC-26, and 30-UC-27**

July 25, 1967

**DECISION AND ORDER CLARIFYING CERTIFICATION IN CASES 30-UC-23 AND 30-UC-27; AND DENYING MOTIONS TO CLARIFY CERTIFICATION IN CASES 30-UC-24 AND 30-UC-26.**

The separate petitions herein were duly filed to clarify the units as defined by the Board in the certifications it concurrently issued in 1946 to Local 19806 and to TEA's predecessor, respectively, for certain employees of the Employer at its Milwaukee, Wisconsin, plant.<sup>3</sup> The petitions were consolidated for purposes of hearing. A hearing in which all parties appeared and participated was held February 9, 1967. On February 24, 1967, the Regional Director issued an order transferring this case to the National Labor Relations Board. Thereafter, all parties filed briefs.

The Board has considered the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed.<sup>4</sup> The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the parties, the Board finds:

The Employer is a New York corporation engaged at Milwaukee, Wisconsin, in the manufacture and sale of automobile frames and parts, pipe casings, and other materials for the petroleum and chemical industry.

Each of the unions before us is a currently recognized representative of employees of the Employer in a separate unit. The proceedings herein are addressed to both these units, and seek clarification of the Board's 1946 certifications establishing the units.

The certification issued to TEA's predecessor in 1946 describes the certified unit as follows:<sup>5</sup>

All tracers, detail draftsmen, layout draftsmen, designers, plant layout engineers, draftsmen

checkers, designer checkers, chemists, metallurgists, laboratory technicians, laboratory assistants A, laboratory assistants B, estimators, planners, time study men, technical clerks, welding engineers, sales engineers, and industrial engineers, and foremen helpers and group leaders of such classifications, but excluding clerks, stenographers and supervisors, and other employees.

That unit presently includes about 340 employees.

The certification issued to Local 19806 in 1946 describes the certified unit as covering any production, maintenance, and office employees not specifically included in other units found to be appropriate in the same proceeding, or not otherwise described as specifically excluded.<sup>6</sup> That unit presently includes approximately 4,500 employees.

The dispute concerns the unit status of the approximately 18 employees who constitute the non-supervisory complement of department 1674 in the Employer's automotive laboratory. Of these 18 employees, 10 are currently represented as part of TEA's unit and 8 as part of Local 19806's unit. The 10 represented by TEA are currently classified as technicians I. It is undisputed, however, that this job title was recently set up as a substitute for and describes the same job that was formerly titled laboratory assistant A. Of the eight employees currently represented by Local 19806, five are classified as experimental workers A, two as experimental welders, and one as a garage mechanic. There is also in issue here an additional classification titled experimental worker B, which the Employer fills from time to time but which was not in fact filled as of the date of the hearing. Employees who have held that classification have been represented by Local 19806.

TEA and Local 19806 each claims that *all* employees of department 1674 are properly part of its certified unit. Local 19806 would therefore have the Board find that technicians I belong in its unit; while TEA would have the Board find that experimental workers A and B, experimental welders, and the garage mechanic belong in its unit. The Employer agrees with TEA that experimental workers

<sup>1</sup> Herein called Local 19806.

<sup>2</sup> Herein called TEA.

<sup>3</sup> The 1946 proceedings (Cases 13-R-3539 and 13-R-3595) are reported at 70 NLRB 1288. They resulted in separate certifications of a number of unions, including Local 19806 and Technical Engineers, Architects, and Draftsmen's Union, Local 54, AFL. In 1951, the latter union voted to disaffiliate from the AFL and to change its name to Technical Engineers Association, the Petitioner in Case 30-UC-27 herein. Following the disaffiliation action, the Employer in effect acknowledged TEA as the successor or *alter ego* of the certified labor organization, and continuously bargained with it at all times since as the representative of the same unit as was defined in the certification.

Other unions obtaining certifications in the same proceedings have no interest in any of the employees who are the subject of the instant petitions.

<sup>4</sup> We hereby deny Local 19806's request for an order requiring the Regional Director to produce all statements submitted by the parties to him in response to his prehearing letter dated January 23, 1967. Contrary to the contention of Local 19806, we find that if any such statements were submitted they are outside the purview of Sec. 102.133 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. The Regional Director's solicitation and receipt of such statements at the prehearing stages of a proceeding involve matters entrusted to his administrative discretion under Sec. 102.63 of the Board Rules, and are expressly exempted from Sec. 102.133's disclosure requirements by Sec. 102.128(a) and 102.130(a).

<sup>5</sup> In the discussion hereafter, this unit will be referred to as the TEA unit, and that for which Local 19806 contracts, as the Local 19806 unit.

<sup>6</sup> See 70 NLRB 1288, 1291.

A and B properly belong in TEA's unit. The Employer requests, however, that in the event the Board finds that experimental workers A and B are properly in Local 19806's unit, it then also finds that technicians I properly belong in that unit. The Employer takes no position on the merits of so much of TEA's motion as involves experimental welders and garage mechanic.

The relevant facts are as follows:

The automotive laboratory was first established just before World War II, was then inactivated for the duration of the war, and was reactivated about August 1945. It has remained in continuous operation since that date.

The main function of the automotive laboratory was and is to build and test prototypes of experimental vehicles and such components thereof as are produced by the Employer's automotive division. The components include automotive frames, control arms, and other associated parts. The laboratory employees have always performed their functions under the technical direction of professional employees in the development engineering department. The engineers supply the laboratory employees with blueprints or design charts of the prototype and/or the component parts, and advise them as to the kind of test data to be supplied.

The automotive laboratory was still a relatively small department as of the date the Board issued the certifications in November 1946. The laboratory was then staffed with four employees, two of whom were classified as "junior designers," and two of whom were classified as "laboratory assistants." All were then represented by TEA's predecessor and were unquestionably part of its certified unit.<sup>7</sup> No additional permanent employee was added to the laboratory staff until 1951. Between 1946 and 1951, however, the Employer made a number of temporary assignments to the automotive laboratory to provide assistance to the permanent staff whenever a need therefor arose. All such temporary assignments were made to employees who were regularly employed in the Employer's sample shop, some of whom were there represented by Local 19806, and some by the Machinists.<sup>8</sup> The temporarily assigned employees functioned as helpers to the laboratory assistants represented by TEA's predecessor and performed some of the testing work together with, or under the direction of, such laboratory assistants.

<sup>7</sup> Although the unit as described in the certification referred separately to laboratory assistants A and B as included categories, it is clear from the record as made in the 1946 proceeding that the use of the "A" and "B" symbols reflected the parties' recognition of the Employer's right to grade its laboratory assistants according to their skill and experience where the distinction appeared appropriate. Thus, relevant portions of the 1946 record show the agreement of all the parties (including Local 19806) that all "laboratory helpers" and other employees in "technical types of employment" were deemed included in the unit found appropriate under the petition filed by TEA's predecessor and for which that union was ultimately certified.

In 1951, the Employer decided to expand the permanent automotive laboratory complement. It added to the laboratory staff five employees, all of whom were transferred to the laboratory from the sample shop. The first employee thus transferred had been employed in the sample shop as a bench machinist, and as such had been represented by the Machinists as part of a craft unit of machinists. The other four had been employed in the sample shop as experimental workers A, and as such had been represented by Local 19806 as part of its production and maintenance unit. All five were assigned to perform some or all of the testing functions previously performed by laboratory assistants represented as part of the TEA unit. The Employer changed the job title of the first of the transferees to laboratory assistant. This employee was thereafter represented as part of the TEA unit. The Employer, however, permitted the other four to retain the experimental worker A job title, and, apparently yielding to demands made by Local 19806, continued to recognize Local 19806 as the representative of these employees.

In subsequent years the laboratory activity expanded, new and more complex testing equipment was added, the laboratory staff was gradually increased, and the job classifications were restructured to reflect different grades of skill and experience as well as new and specialized job functions.

As of the date of the hearing, the laboratory's job structure included: (a) three classifications in a single line of progression: experimental worker B (the entrance grade); experimental worker A, and technician I (the top grade); and (b) two other classifications: experimental welder and garage mechanic.

Continuing the practice begun in 1951, the Employer still bargains with TEA for the laboratory employees now classified as technicians I, and with Local 19806 for all employees otherwise classified. But, as noted above, each of the parties before us opposes the continued maintenance of this 16-year history of split representation of the automotive laboratory employees, contending it has provoked, and will continue to provoke, dissension and dispute. Each party having interest in resolving the dispute has accordingly invoked our clarification procedures in an effort to obtain a peaceful settlement. And in presenting their respective positions,

<sup>8</sup> At that time the automotive laboratory and the sample shop were both housed in a wooden shack-type structure in adjacent rooms. Craft machinists in that shop were represented by the Machinists, others by Local 19806. As a result of subsequent relocation, the sample shop is now housed in the main production plant, and the automotive laboratory in a structure located across the street and known as building 83. The development engineering and design engineering departments are also housed in building 83.

all parties appear to agree that, although technological developments have resulted in an upgrading of the skills now required to perform the various laboratory jobs, the job content of each classification has remained substantially the same throughout its existence.

The evidence relating to the present job content of each of the disputed classifications shows as follows:

Those employed as technicians I are responsible for performance of an entire technical test project as defined by the development engineers. A project usually involves use of an experimental vehicle as a test base. The particular duties of technicians I include the setting up of the test equipment required to test particular components of the experimental vehicle, the maintenance of the proper testing conditions and procedures, and the accurate compilation of test data. Experimental workers A perform portions of the various testing operations required by the project and otherwise assist technicians I as called upon to do so. Acting under the technical guidance of technicians I, they spend approximately two-thirds of their time working jointly with technicians I under common supervision on the same test project. Experimental workers B, where employed, occupy a trainee relationship to higher rated workers and perform some of the more routine testing tasks under the latter's direction.

Employees classified as experimental welders and garage mechanics are principally responsible for certain specialized work functions not performed by any of the above classifications. Their duties involve the assembly, disassembly, and mechanical repair of the component parts of the experimental vehicles subjected to the testing processes. When there is no assembly or repair work, experimental welders, and occasionally the garage mechanic, may be called upon to assist in the performance of the laboratory work. Unlike the other automotive laboratory employees, however, they are not in the line of progression which begins with the experimental worker B classification and goes up through the technician I classification.

Upon the foregoing facts we have no difficulty in finding that technicians I and experimental workers

A and B in the automotive laboratory are in fact laboratory assistants with varying degrees of skills, and that the testing functions they now perform are substantially the same as those which were performed in the automotive laboratory at the time of the 1946 unit determination solely by employees classified as "laboratory assistants."

We also have no difficulty in finding that all laboratory assistants are within the intended definition of the certified unit now represented by TEA and outside that of the certified unit now represented by Local 19806. In these circumstances we find no merit in Local 19806's request that we clarify its unit to include specifically therein those employees classified as technicians I.<sup>9</sup> Conversely, we find clearly supportable the requests of the Employer and TEA that we clarify TEA's unit to include specifically therein experimental workers A and B.

Local 19806 further claims, however, that as the certified unit represented by TEA includes both professional and nonprofessional employees, the Board, because of Section 9(b)(1) of the National Labor Relations Act, as amended,<sup>10</sup> is without power to order the inclusion of experimental workers A and B in that unit without first affording the professional employees therein a self-determination election. We find no merit in this contention.

The Board had heretofore held that Congress did not intend the enactment of Section 9(b)(1) to render inappropriate previously established units combining professional and nonprofessional employees and that this section does not bar parties to an earlier established bargaining relationship in such a unit from continuing to maintain their bargaining relationship on the same unit basis.<sup>11</sup> The sole operative effect of 9(b)(1) is to preclude the Board from taking any action that would create a mixed unit of professionals and nonprofessionals without first according the professionals involved the opportunity of a self-determination election.<sup>12</sup>

In the instant case, it is conceded that all categories of employees whose unit status we are being asked to clarify are nonprofessional. Our determination therefore that some such categories are identical to those of other nonprofessional categories

<sup>9</sup> Our finding that the automotive laboratory assistants are within TEA's certified unit and outside Local 19806's rests on evidence showing the intended scope of each of these units when the Board established them in 1946, as well as on facts in this record which persuade us that the basic functions now performed in the laboratory are essentially the same as they were then. We believe this evidence of interest is entitled to greater weight than the facts upon which Local 19806 rests its claim for the inclusion of the automotive laboratory assistants in its unit, namely that production employees possess and exercise contractual rights to "bump" into the lower rated automotive laboratory jobs, and that other laboratory employees represented by TEA seldom transfer into the automotive laboratory or otherwise "interchange" jobs.

<sup>10</sup> Sec. 9(b)(1) provides in pertinent part that the Board "shall not decide" that a combined unit of professional and nonprofessional employees is appropriate "unless a majority of such professional employees vote for inclusion in such unit."

<sup>11</sup> See for example *Retail Clerks Union No. 324, etc. (Vincent Drugs, No. 3, Inc.)*, 144 NLRB 1247, *International Telephone and Telegraph Corp.*, 159 NLRB 1757.

<sup>12</sup> In addition to the cases cited in the preceding note see also *Lockheed Aircraft Corporation.*, 155 NLRB 702. In that case, we were asked by a union representing an existing unit of professional and nonprofessional employees to determine through our clarification procedures that certain categories of employees— whose inclusion in the unit was disputed by the employer— were properly part of a historical unit established prior to the enactment of 9(b)(1). As the evidence in that case disclosed that at least some of the categories in issue were professional in character, and as there was no sufficient record basis to identify which, among them, if any, were professional, we refused to issue the requested clarification order. Contrary to Local 19806's position, we find that case to be clearly distinguishable from the one before us, because, unlike the instant case, it involved an issue as to the placement of professional employees.

ries concededly represented by TEA as part of its unit, and that they therefore properly belong in that unit, neither affects nor derogates from any of the rights accorded by the statute to professional employees who are now in the TEA unit. We hold, accordingly, that Section 9(b)(1) of the Act does not prohibit our granting the relief here sought.<sup>13</sup>

In accord with the respective motions of the Employer and TEA, we shall therefore clarify the units herein so as to include experimental workers A and B in the automotive laboratory, department 1674, in TEA's unit, and, conversely, to exclude them from Local 19806's unit.

We shall, however, deny so much of TEA's clarification motion as requests a determination that experimental welders and the garage mechanic in department 1674 are properly part of its unit. As indicated above, the work such employees regularly are engaged to do is largely dissimilar from that performed by the other automotive laboratory employees. Moreover, unlike such latter employees, the experimental welders and the garage mechanic have no rights of progression to the higher rated

laboratory jobs. Further, there is nothing in the express language of the certification on which TEA rests its claims to negate Local 19806's contention, supported by bargaining history, that these employees are part of its certified unit. Our order below reflects the above determinations.

#### ORDER

It is hereby ordered that the certifications issued in Cases 13-R-3539 and 13-R-3595 be, and they hereby are, clarified as follows:

The classifications of experimental workers A and B in the automotive laboratory, department 1674, are specifically included in the certified unit represented by Technical Engineers Association, and specifically excluded from the certified unit represented by Smith Steel Workers, directly affiliated with Local 19806, AFL-CIO.

To the extent that any petitions filed by the parties herein seek any further clarification of the aforementioned certified units, the same are hereby denied and dismissed.

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<sup>13</sup> This is not to be construed as a new certification