

**Bell Aerosystems Company, Division of Bell Aerospace Corporation<sup>1</sup> and Niagara Frontier Technical Association, Local 205, American Federation of Technical Engineers, AFL-CIO,<sup>2</sup> Petitioner and Local 501, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Intervenor and Local 516, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Intervenor. Case 3-UC-39**

August 27, 1970

## DECISION AND ORDER DENYING PETITION

BY MEMBERS FANNING, MCCULLOCH, AND JENKINS

On September 5, 1969, Petitioner, the representative of a unit of the Employer's employees since it was certified by the National Labor Relations Board in 1962, filed a petition requesting clarification of the unit. On October 8, 1969, a hearing was held before Hearing Officer L. Warren Tucker for the purpose of taking testimony with respect to the issues raised by this petition.<sup>3</sup> All parties appeared and participated at the hearings. Thereafter, the parties filed briefs and answering briefs. On October 8, 1969, 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.

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

Upon the entire record, including briefs and reply briefs, the Board finds:

The Employer is a division of the Bell Aerospace Corporation, which is a subsidiary of Textron, Incorporated. It is engaged in engineering, research and development, and production of military and aerospace hardware, including rocket engines and missiles.

Petitioner was certified in 1962 as the representative of a unit of "All technicians in the Avionics and Rockets divisions of the Employer [at the Employer's Niagara Frontier facilities in Erie and Niagara counties in the State of New York], but excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act."<sup>4</sup>

Petitioner contends that it is entitled to represent classifications as to which the Employer refuses to grant it recognition. The first argument Petitioner advances is that its 1962 certification as representative of "all technicians" in the Rockets and Avionics Divisions authorized it to represent all technicians in the two divisions regardless of their location, function, or representation at the time of Petitioner's certification. This contention requires a review of the bargaining history at the Employer's operation.

Local 501, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW),<sup>5</sup> an Intervenor in this case, has maintained a collective-bargaining relationship with the Employer since about 1937. Essentially, Local 501 represents production and maintenance employees.

Local 516, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW),<sup>6</sup> also an Intervenor, has maintained a collective-bargaining relationship with the Employer since 1946, at which time it was formally certified to represent a unit of inspection employees.<sup>7</sup>

In 1952, Local 501 filed with the Board a petition seeking an election to obtain the benefits of a Board certification in the aforementioned production and maintenance unit already represented by it. In the petition, Local 501 sought to include in the unit approximately 600 laboratory technicians, all of whom were employed primarily in the research and development phase of the Employer's business. The Board found that the basic production and maintenance unit was appropriate; however, the Board specifically excluded the laboratory technicians from the requested unit. In excluding these technicians, we stated:

[The laboratory technicians'] duties are to assist engineers, draftsmen, physicists, and mathematicians on programs of research and development. . . . This research and development program requires continual testing of plans and ideas, drawing board work, and testing work in the laboratories . . . the technicians all work

<sup>1</sup> As amended at the hearing

<sup>2</sup> As amended at the hearing

<sup>3</sup> The present petition is virtually identical to one filed by Petitioner in 1966. The 1966 petition was withdrawn after completion of a hearing and after the case had been transferred to the Board. The present proceeding is essentially a reopening of the 1966 proceeding. The record of the 1966 hearing was stipulated into evidence, and additional evidence was received. The parties also were afforded another opportunity to submit briefs to the Board. Geoffrey D. Spinks was the Hearing Officer at the 1966 hearing.

<sup>4</sup> See 131 NLRB 130, as amended on March 6, 1962

<sup>5</sup> Herein referred to as Local 501

<sup>6</sup> Herein referred to as Local 516

<sup>7</sup> Case 3-RC-1279

in close association with the engineers to translate theoretical design ideas into practical form . . . .

We also compared the technicians with employees in the experimental department, who were included in the unit found appropriate:

The employees of the experimental department assemble the ultimate product, test it, and make final manufacturing drawing. Some of the work they do is comparable to that of certain technicians in the laboratories, but requires less originality and no research and development technique . . . [laboratory technicians] exercise a greater degree of initiative and originality; and the production or assembly aspect is only a minor part of laboratory work, whose main function is development and research <sup>8</sup>

Thus, while we noted that there were probably some technical employees in the included experimental department, we differentiated between laboratory technicians and other employees on the basis of skills and the technicians' function—research and development.

In 1960, Petitioner filed with the Board a representation petition which was the basis for its eventual certification in the unit in which clarification is now being sought. The petition requested a unit of all "technicians" employed in the Avionics and Rockets Divisions. In our Decision and Direction of Election, answering a contention of the two UAW locals that the work performed by the technicians was markedly similar to that performed by Locals 501 and 516, we stated:

In an earlier case, Local 501 sought to include these same technicians in a unit of production and maintenance employees. The Board . . . found that, although there were a few employees represented by Local 501 who were called "technicians," the work performed by the latter employees differed materially from the work of the technicians excluded from the production and maintenance unit.

\* \* \*

. . . the contracts of Local 501 and 516 do not cover the technicians here involved . . .

\* \* \*

In the earlier case, *supra*, the Board specifically found that the same technicians as involved herein were technical employees under the Act,

and excluded them from the production and maintenance unit.

\* \* \*

. . . the work of the technicians is substantially the same now as it was at the time of the 1952 decision.

In addition, in deciding that the Employer's Avionics Division and Rocket Division should be represented in a single unit, we stated, as a persuasive factor, that both divisions "are engaged in research and development."

Although the above references in the two Decisions thus clearly described, as the employees which Petitioner had requested and which the Board found appropriate, a unit of research and development "technicians" not represented by Locals 501 or 516, the Board formally stated the appropriate unit in which the election was to be held as "All *technical employees* in the Avionics and Rocket Divisions of the Employer." (Emphasis supplied.) This inconsistency resulted in the filing by all parties of motions for clarification or remand for further hearing. On June 19, 1961, the Board remanded the case for further information on the existence and status of all "technical employees" throughout the Employer's two divisions. On August 14, 1961, the Employer moved that the order remanding the case be withdrawn and that an election in a unit of all "technicians," rather than all "technical employees," be directed. This motion was denied. But, on January 19, 1962, prior to completion of the remand hearing, the Employer moved for reconsideration of its motion. In the papers supporting its motion for reconsideration, the Employer included a letter to the editor of a local newspaper. The letter, dated November 28, 1961, and signed "Louis Longo, President, Local 205, AFTE, AFL-CIO," protested the 15-month delay in holding the election sought by Petitioner, and complained that "the NLRB has decided that not just technicians, but all technical employees must vote in the election." The letter further stated that the technicians were a sizeable, well-defined group, a majority of whom had signed up with the Union. Although served with the Employer's motion and asked to respond, the other parties, including Petitioner, did not respond. Thereafter, the Board duly considered the matter and concluded that a unit of all "technicians" was appropriate. Accordingly, the Board, on March 6, 1962, granted the Employer's motion, and substituted for the words, in the Direction of Election, "all technical employees," the words "all technicians." The Petitioner won the election and was certified in the amended unit.

Despite this history, Petitioner now contends "that all 'technicians' wherever employed in the plant, or

<sup>8</sup> Bell Aircraft Corporation, 98 NLRB 1277, 1282

whatever employed at, should be considered as a part of the originally certified 'technicians' unit." On the other hand, the Employer and Intervenors contend that only research and development technicians were intended to be included in Petitioner's 1962 certification.

Based on the aforementioned decisional history, i.e., the 1952 and 1962 representation cases, we think it clear that Petitioner was knowingly certified in 1962 to represent a unit of technicians who (1) were engaged in the research and development phase of the Employer's business, and (2) were not already represented by Locals 501 or 516. The repeated references in the Decisions to "research and development"; Petitioner's awareness in 1962 of the existence of the other two bargaining units; and Petitioner's acquiescence in the Employer's motion to limit the requested unit to "technicians," thus truncating the ordered inquiry into the status of the "technical" employees throughout the plant, all combine to make it apparent that Petitioner accepted certification in a unit of technicians engaged in research and development not then represented by the Intervenors. We therefore reject Petitioner's contention that its certification extends to all technicians, wherever they may be, in the plant.

We do agree, however, with Petitioner's alternative argument that if any of the jobs already represented in 1962 have since that time been so substantially modified that they may properly be characterized as "research and development technician" classifications, such jobs would deserve consideration for clarification into Petitioner's unit. At the hearings, the parties stipulated that the job descriptions of the contested job categories are an accurate representation of the jobs. We have reviewed the job descriptions and all testimony related thereto, and find that 13 of the contested job categories were in existence and were represented by the other unions prior to Local 205's election and certification in 1962. Since 1962, a number of these job descriptions have been revised. Contrary to Petitioner's contention that these revisions now warrant the placing of these job categories into Petitioner's unit, we agree with Mr. William R. Fuller, the Employer's manager of personnel administration, that the revised job descriptions did not materially change the basic nature of the job, but rather merely indicated a change in the labor grade and/or a more detailed description of the job. Fuller added that while the jobs have become increasingly more complex, due to technological advances and the greater demands of customers, their primary function remains unchanged. In our judgment, a distinction still exists at the plant between research and development work and production work, and it does not appear that

these jobs have crossed the line so as to be characterized as research and development. As there is no substantial evidence which is contrary to Mr. Fuller's testimony, and as his testimony is corroborated by a review of the job descriptions, we shall deny Petitioner's request that these 13 jobs be clarified into its bargaining unit.

Of the other jobs which Petitioner asks to have clarified into its unit, six jobs existed which were not represented by any labor organization when Petitioner was certified in 1962. These jobs are: Engineer, Electronics, Class I; Engineer, Electronics, Class II; Engineering Assistant (Job Code 655-A13); Engineering Assistant (Job Code 655-H1); Engineering Aide; and Engineer, Manufacturing, Research and Development. As the employees in these categories work quite closely with the research and development technicians, it is reasonable to impute knowledge of their existence to Petitioner at the time of 1962 election.<sup>9</sup> In view of this, and of the fact that it would be less than fair now to add the unit positions which existed at the time of the election and which have not changed in any substantial way since that time, we are not disposed to clarify these categories into Petitioner's unit.<sup>10</sup>

The job of research associate was created in 1968 and is not currently represented by any union. A person in this job must have

Three years completed course work at college . . . or equivalent . . . with 5 to 10 years of specialized progressive laboratory training and experience. [He] must be capable . . . of research experiments . . . with a minimum of supervision and independently in the absence of Research Scientist personnel.

His duties are often in the area of pure research, as he

collaborates with and generally assists Research Scientists in analytical and experimental research work directed towards obtaining marked advances in the state-of-the-art and the development of techniques, materials or

<sup>9</sup> Fuller testified that his recollection was that the classifications of Engineering Aide and Engineering Assistant were produced and exhibited to Petitioner during the 1962 certification procedure, Petitioner did not claim the jobs at that time.

<sup>10</sup> We note also that the two classes of Engineer, Electronics, appear to qualify as electronics engineers, and, as professionals, these employees could not be included in the unit without the election provided by Sec 9(b)(1) of the Act, that the same obstacle to clarification appears to apply also to some of the persons employed in the classification of Engineer, Manufacturing, Research and Development, and that some of the persons in the two Engineering Assistant classifications act in a supervisory capacity with respect to the technicians and would also be excluded for that reason.

processes that are several steps in advance of the engineering or application stages currently in use.

In addition, he "has considerable independent responsibility for the overall accomplishment of the laboratory work and the optimum attainment of the desired results." The job description of a Research Associate further states that, "while not a graduate engineer . . . [he makes] true professional engineering decisions," Petitioner submits for purposes of comparison the category of Technician, Chemical, III, presently included in its unit. Prerequisites of this job include technical school or 2 years of college and 4 to 5 years of progressive technical chemical laboratory experience. The job's duties include selecting and applying "established" techniques and methods. In contrast to the substantially professional nature of the Research Associate's functions, an employee in this category performs the type of work which is normally assigned to technicians—the performance of tests and construction of assemblies necessary to produce a working model of an engineer's or scientist's theoretical concept. On the basis of the above, we find that the Research Associate is therefore not appropriately included in Petitioner's unit, as that unit was defined in 1962.

This leaves for consideration a number of jobs which have been created since 1962, the representational rights to which the Employer has accorded to one or the other of the two UAW locals. Petitioner contends that Inspector, X-Ray & Eddy Current, Non-Destructive, All Around, should be included in the unit. This job category was created on February 16, 1967, and is recognized by the Employer as represented by Local 516, the inspector's unit. An employee in this job category "performs various types of nondestructive acceptance tests . . . to determine the existence of defects in raw stock, castings, forgings, weldments, components, subassemblies, assemblies or systems . . . and has the responsibility to reject any specimen which fails to meet minimum standards." X-ray machines are also used by technicians in the laboratories in conjunction with research and development. However, the work of the classification under discussion is not research and development work. We find that since employees in this category primarily do acceptance testing in the production stage, they may not be clarified into Petitioner's unit.

Inspector, Ultrasonic/Non-Destructive, was created in 1965, and was included in the unit represented by Local 516. While this work is similar to work performed by some employees in Petitioner's unit, it is done in connection with acceptance testing of

helicopter rotor blades rather than in connection with research and development. This job, therefore, does not warrant representation by Petitioner's unit.

In 1962, the Employer established a job category entitled "Data Processing Equipment Operator." The job description of this category was revised in 1966 and is currently covered by the Local 516 contract. After reviewing the job description, we find that this category is not entitled to clarification into Petitioner's unit, as it appears to relate more to the accounting, financial, and general operations functions of the Employer than to research and development.

Petitioner also requests that numerous "Field" categories be clarified into its unit. These classifications have all been created since 1962. They are simply extensions of in-plant classifications, activated when work in such classifications is performed in the field at customer locations, rather than the Employer's plant. Most of these field jobs are in the Local 516 unit, and, as to some of them, the Petitioner is claiming the field job even though it does not claim the plant job. As the field jobs are substantially identical to the corresponding in-plant jobs, and, as Petitioner has demonstrated no basis for its claim to them, either for reasons discussed above or because the basic jobs are clearly within the units represented by the UAW locals, we find that Petitioner is not entitled to represent these categories by way of clarification.

If Petitioner desires to represent other technical employees in the plant besides those technicians engaged in research and development work, the unit to which its certification is limited, a proper procedure would be the filing of a representation petition. Its present petition for clarification is inappropriate for settlement of work assignment disputes or for modification of Petitioner's unit description from a unit of technicians primarily engaged in research and development to a unit of all technical employees wherever located in the plant.

In sum, we conclude that Petitioner is not entitled to clarification into its unit of any of the aforementioned jobs.

## ORDER

It is hereby ordered that the petition for clarification filed by Niagara Frontier Technical Association, Local 205, American Federation of Technical Engineers, AFL-CIO, be, and it hereby is, dismissed in its entirety.