

Aerojet-General Corporation and United Steelworkers of America, AFL-CIO, Local 4670. Cases 21-RM-1401, 21-RM-1403, and 21-UC-33

September 30, 1970

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon petitions duly filed under Section 9(b) and (c) of the National Labor Relations Act, as amended, a hearing was held before Orville S. Johnson, Hearing Officer. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 21, this proceeding was transferred to the Board for Decision. Thereafter, the parties filed briefs in support of their respective positions.

Pursuant to Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record¹ in this proceeding, 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 organization involved claims to represent certain employees of the Employer.
3. No question affecting commerce exists in Cases 21-RM-1401 and 1403 concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

The Employer is a Delaware corporation engaged in the manufacture of missiles and aircraft hardware. Its ordnance division, which is the subject of this proceeding, operates three major facilities at Fullerton, Downey, and Chino Hills, California. The ordnance division is broken into four components, administration, controller, research and development, and operations. All executive, administrative and finance employees connected with the Petitioner's production and maintenance unit are located at Fullerton, as

are some 500 production and maintenance employees in the unit. Research and development has approximately 400 employees, located at Downey and Chino Hills; some 300 at the former location and the balance at Chino Hills. A model shop, which is part of research and development, is located at Downey and has about 100 employees. A machine shop, the functional equivalent of the model shop, is located at Chino Hills, where the Employer loads and tests explosives. There are approximately 90 employees regularly at Chino Hills, of whom about 70 are in a unit represented by the International Association of Machinists. All three facilities are located within a radius of 20 miles from Fullerton; Downey is about 35 miles from Chino Hills.

The Petitioner is the exclusive collective-bargaining representative for the unit of production and maintenance employees at the Fullerton Facility and Downey Plant. In July 1968 it requested information from the Employer concerning approximately 145 ordnance division employees whom the Employer refused to recognize as part of the existing units. A further request was made in April 1969, emphasizing Petitioner's view that the model shop had been converted to a production operation and that it along with certain other operations and employees were properly part of the bargaining units. On April 8, 1969, the Petitioner filed a petition for unit clarification, Case 21-UC-33, covering employees in 11 categories. On April 9 and 21, 1969, the Employer filed petitions in Cases 21-RM-1401 and 1403, respectively covering technical employees at Fullerton and hourly test and development employees at Downey.

Petitioner disclaims any interest in representing the units requested by the Employer and has moved that the petitions in those cases be dismissed, since it requested only that certain operations and employees be recognized as part of its existing units. As there has been no request to represent these employees in separate units, we find that no question concerning representation has been raised in Cases 21-RM-1401 and 1403 within the meaning of Section 9(c)(1) of the Act.² We shall dismiss these petitions.³

4. The Petitioner in Case 21-UC-33 seeks the inclusion of various categories at the Downey and Fullerton locations. It claims that the research and development employees in the model shop at Downey constitute an accretion to its production and maintenance unit. The Downey facility was acquired from Rheem Manufacturing Company in 1959, at which

¹ The parties by joint motion have moved that the record be reopened for the introduction of Reserved Exh 59 and Employer's Exh 68. The motion is granted and the exhibits are hereby incorporated into and made part of the official record in this proceeding.

² *Oyster Creek Division, The Dow Chemical Co.*, 179 NLRB No 128

³ In view of this, we find it unnecessary to rule upon the Union's motion to dismiss the petition in Case 21-RM-1403 on the ground that the unit sought is inappropriate.

time the research and development employees were excluded from the certified unit. *Rheem Manufacturing Co.*, 112 NLRB 52. Petitioner contends that there have been changes in the work of the employees in question such that prior bargaining history and Board certifications are no longer controlling. It is argued that an accretion has occurred because, *inter alia*, model shop employees do substantial amounts of regular production work; members of the existing unit have done substantial amounts of research work, similar if not identical to that performed by the employees in question; there is a transfer and flow of work between the two groups; and the two groups have substantially similar skills, functions and experience.

The Petitioner here also alleged in 1957 that the model shop employees had been accreted to their production and maintenance unit. At that time the Regional Director rejected the contention on the basis that the employees sought had been excluded from the bargaining unit and directed an election on the Employer's petition in an alternative unit of research and development employees stipulated by the parties. *Rheem Manufacturing Co.*, 21-RM-459.⁴ In the ensuing election the employees voted against representation.

In 1960 an election was held in a stipulated unit of all hourly test and development operation employees at Downey on a petition by the International Association of Machinists.⁵ The Steelworkers intervened, but once again the employees rejected representation.

The Union bases its accretion claim largely on changes in company structure and work going back to 1959. The record establishes that research and development employees have performed production work and that employees in the present unit have performed work which best may be described as "research and development" as those terms are generally understood. The amount of production work performed by model shop employees, on the basis of the data made available by the parties, has ranged from a high of about 45 percent for a 1-week period in 1968 to a low of about 17 percent⁶ for a similar period in 1969. Testimony by company officials establishes that it is standard practice for research and development to "bid" on production work from other departments in order "to maintain the level of the people that are in there." A number of grievances have been filed by the Union since at least 1961 alleging individual instances of nonunit employees

performing unit work and of assignment of unit work to research and development, and charging the Company was violating the bargaining agreement by not recognizing the accretion of model shop employees to the bargaining unit. The question of the exclusion of the model shop employees was also raised at contract negotiations, but not resolved.

The record does not establish that there have been recent changes in the Employer's operations or the work performed by the employees in question sufficient to overcome the past practice of their exclusion from the unit and to warrant the conclusion that they have accreted to the present bargaining unit. The most recent changes, the removal of the bulk of the production unit employees to Fullerton and the removal of the model shop from the supervision of the operations manager, who was also in charge of production at the Downey facility, serve only to accentuate the differences between the two groups. The figures advanced by Petitioner show that at a minimum three-quarters of the work currently performed by model shop employees is work which it apparently concedes is true research and development. While there apparently has been some blurring of the line between research and development and production work in the past, it is not sufficient at this date to compel the absorption into the existing unit of historically excluded employees who have previously rejected union representation. We shall dismiss this portion of the unit clarification petition.

Petitioner claims the accretion of three employees located at Fullerton classified as quality control analyst, Vigilette, Arntson, and Edwards, working directly under the supervision of the inspection planning supervisor who does not directly supervise any unit members. The classification was first instituted in 1957 and its occupants were eligible to vote in a 1961 Board-directed election in plantwide unit of technical employees.⁷ The current work function was instituted in 1962 or 1963. Petitioner contends, however, that the employees in this classification are misclassified and that they may more accurately be described as project documentation auditors, a classification instituted in 1964 or 1965, which function they perform approximately 50 percent of the time. Project documentation auditors, however, are not included in the bargaining unit.

Their work consists primarily of setting documentation standards for new work, based on production contracts, and reviewing completed shop orders and planning and inspection instructions to insure that customer requirements have been met. They work in a separate enclosed temporary office but use the

⁴ Not printed in NLRB volumes

⁵ *Aerojet General Corp.*, 21-RC-6661, not published in NLRB volumes

⁶ This figure includes work from Aerojet's other Divisions which would not necessarily have been performed by unit employees if not done by research and development employees

⁷ 131 NLRB 1094.

same gate, parking lot, building entrance, and time-clock as unit members and walk through the production area to reach their office

In view of their separate immediate supervision, lack of work contact with unit members and similarity of work to classifications not sought, we find that they have not been accreted to the bargaining unit.

Five employees classified as process technicians who work in the hydro-test area at Fullerton are sought: Brooks, Carrassi, Chase, Daniels, and Lane. The classification has existed since 1951 or earlier; the job title was changed from process analyst in 1957. Process technician was included in a technical unit found appropriate in 1961;⁸ union representation was rejected at that time. Approximately 50 percent of their time is spent in an office. Current duties have been performed since 1962 and include preparing hydrostatic test specifications, developing testing techniques and requirements, documenting test results, supervising tests run by unit members, and setting up and maintaining certain complex electronic equipment used for recording the tests. Unit members with whom they work perform at a lower skill level, doing manual tasks pursuant to instructions from process technicians

In view of the difference in skills and the fact that these functions have been performed since 1962, during which time at least two collective-bargaining agreements have been negotiated without including them in the unit, we find that these employees have not been accreted.

Process Engineer, Sr., Gilmore, also sought as an accretion, currently spends almost 100 percent of his time in a laboratory at Fullerton. He is supervised by the process engineer, Principal, who does not directly supervise any unit members. The classification was instituted in 1964 as an upgraded version of process technician, which has existed since 1951 and was included in a separate unit of technical employees found appropriate in 1961.⁹ For a period in 1968 Gilmore collected solution samples but ceased doing so following a grievance. His job is described as that of process planner and chemical analyst and involves chemical and bacteriological analyses of various coolants and solutions used in production. Additionally, Gilmore writes technical processing instructions for solutions. While the classification requires a B.S. in chemistry or its equivalent, Gilmore has only a high school education. Although it is alleged that Gilmore's function in fact is more nearly related to bargaining unit inspectors-technical, who perform routine tests to insure conformance to specifications, they are paid at an hourly rate of some \$500 a month less than Gilmore's salary, are separately super-

vised, and have lower skill requirements. In view of the foregoing he may not properly be accreted to the unit.

The "clean room" employees, Process Engineer Lester and Process Technician Landress are also sought.¹⁰ The clean room was established in 1965 for use in assembly operations requiring a dust-free environment. The process engineer classification was instituted in 1964 as an upgraded version of process technician and is salaried. Process technician has existed since 1951 or earlier and was included in the technical unit found appropriate in 1961. The clean room employees are responsible on their own initiative for maintaining the room and running quantitative and qualitative tests of the room atmosphere to insure that it meets customer specifications. They also direct unit members in clean room techniques and final assembly operations. They perform no production work as such, but write processing instructions and maintain records of the work performed in the clean room and of the status of the room. They are supervised separately from unit members and there is no evidence that their work has been claimed during collective-bargaining negotiations.

In view of their separate supervision, the uniqueness of their duties, and the fact that they are salaried, they may not be accreted to the existing unit.

Seven employees in the metallurgical laboratory located at Downey are claimed: Junior Engineer Brook; Research Lab Analyst, Sr., Reiswig; Research Lab Analysts Saenger, Lugo, and Sheehan; and Process Technicians Quintana and Voigt. All have the same basic function, performing technical operations in an enclosed area from which unit members are excluded. Tests performed involve metallography, microphotography, micro- and macroscopic examination of metals, hardness testing, and preparation of samples. They do not work with production parts, only with test samples. They are supervised separately from unit members. All of these classifications with the exception of junior engineer, which was not filled, were included in the technical unit found appropriate in 1961.¹¹ The record establishes that there is some overlap in functions which are, or were previously, performed by unit members; grievances filed in 1964 and 1965 were settled with the statement that unit work remains unit work and would not be performed by other than unit members; both Company and Union assert that these grievances were settled in their favor. In view of the separate supervision, segregation from unit members, and the fact that they do not work with production parts, accretion is not

⁸ *Ibid*

⁹ *Ibid.*

¹⁰ At the time of the hearing the clean room was at Downey but was to be moved to Fullerton

¹¹ 131 NLRB 1094

appropriate. Under these circumstances, the mere fact that nonunit members on occasion have performed unit work, or that there is some overlap in function, is not sufficient to warrant a finding that they have been accreted to the unit.

Two employees in the coupon preparation and test area at Fullerton are sought: Research Laboratory Analyst, Sr., Hammond and Process Technician Moser. They conduct, analyze and evaluate tests required for unit members to maintain their welding certifications and keep records of such certifications. They perform the same kinds of tests performed in the metallurgical laboratory and there is some interchange with laboratory employees. Nonunit employees have performed this function since 1962 or earlier and no similar work is performed by unit members. They are supervised separately from unit members. In view of the foregoing, we find that they have not been accreted to the bargaining unit.

Three salaried classifications of numerical control machine programmers, instituted in 1963, are claimed at Downey: tooling and manufacturing engineer sr., tooling and manufacture specialist, and tooling and manufacturing engineer. These classifications became functional in 1964 when the Company installed its first numerically controlled machines. The four employees occupying these positions originate methods of machining with numerically controlled machine tools and have received extensive computer training; all three classifications require a Bachelor of Science degree in engineering. No unit members perform similar work at this skill level. Their work is performed mainly in a separate enclosed office except when testing new tapes, and they are supervised separately from unit members.

Despite the apparent similarity of function to that of machinists (the same objective is accomplished), it is markedly different in fact, since these employees are basically computer programmers. In view of the educational requirements, salaried status, separate supervision, small amount of contact with unit members, and difference in skills, we find that they have not been accreted to the unit.¹²

Quality Control Analyst Ochoa, who is also claimed as part of the bargaining unit at Fullerton, assumed his present duties November 23, 1967, and performs work previously done by engineers and supervisors who were not members of the bargaining unit. No grievances were ever filed and there is apparently no claim that this work was traditionally performed by unit members. Ochoa is responsible for developing and documenting industrial X-ray techniques for use

by unit X-ray operators. Approximately 30 percent of his time is spent directing these operators and approximately 70 percent in a separate enclosed office. He is supervised by a quality engineer who also supervises 16 unit members and no other nonunit members. Since the work is traditionally nonunit and only 30 percent of his time is spent with unit members, he may not be accreted to the unit.

Two Fullerton employees in master records, Blueprint Clerk Crisp and Clerk Luedtke, serve in classifications which have existed since 1951 or earlier. They work in an enclosed reproduction office; 90 percent of their work is performed on a xerox machine. Crisp is in charge of the blueprint reproduction area which services nonbargaining unit support groups. Crisp and Luedtke have no contact with unit members. For approximately 10 months in 1968 their work included traditional unit work but as of the hearing this practice had stopped and they were performing only work which was traditionally nonunit. In view of the bargaining history and lack of contact with unit members they may not be accreted to the unit.

Eight salaried employees in four classifications engaged in production control at Fullerton are also sought as accretions to the unit. The Employer contends that they are excluded by bargaining history, salaried status, and duties as managerial administrative employees. The classifications were instituted in 1963 but derived from classifications going back to 1951. The classifications are supervisor—manufacturing programming and control, assistant supervisor—manufacturing programming and control, production liaison representative, and liaison engineer.

The production liaison representative, liaison engineer and assistant supervisor—manufacturing and control classifications perform similar functions; each of the five employees in these classifications monitors the flow of work in an assigned area of the plant. The responsibilities include expediting, coordinating, trouble shooting, and determining work priorities on machines and need for overtime. They work with shop supervisors and attend supervisory and production control meetings.

Supervisor—manufacturing programming and control Bocker performs the same function as the employees in the above three classifications. Additionally the company asserts that he supervises all swing shift fork lift operators with authority to hire, fire, discipline and reward. The record establishes, however, that ultimate discharge authority lies with the industrial relations department. Two other supervisors—manufacturing programming and control work in the production control room, a separate office. They are responsible for coordinating information on schedule alignments and machine availability.

¹² See *Bethlehem Steel Corp.*, 172 NLRB No. 32, *The Babcock & Wilcox Co.*, 156 NLRB 316

Information is relayed to them by "hot lines" (telephones to the production floor) concerning the status of parts, and they maintain card records of the flow of products through production. These classifications are supervised separately from unit members.

In view of the bargaining history, salaried status, separate supervision, and nature of their duties, we find they have not been accreted to the unit. In this connection, we note that while these classifications bear some similarity to unit classifications of dispatcher, they do not manually move parts, in sharp contrast to the bargaining unit classifications.

Four property control employees classified as department clerks (Antuna, Cunningham, Ramirez, and Pavia) are asserted to have been accreted to the unit. They work in the government accessory crib, moved from Downey to Fullerton in May 1969, and their duties include taking a continual inventory of all capital equipment. Additionally, when "government equipment accessories" come in, they record the arrival, make a computerized property record card, and mark the item for identification. When an accessory is required they move it to the crib entrance where it is picked up by a unit member. No unit members work in the crib and there is no interchange. Since the inception of the crib in 1962 no grievances have been filed on this work and supervision is separate from that of the bargaining unit tool and die crib, reporting ultimately to the administration division.

In view of the separate line of supervision and distinction of function, we find that they have not been accreted to the unit.

Four classifications in manufacturing services, traffic rate clerk sr., department clerk, general clerk, and traffic rate clerk are sought. At the time of the hearing the supervisor of these classifications did not supervise any unit members. These classifications or predecessor classifications have existed since 1951 or earlier; the current work functions have existed since 1962 and the classifications have never been represented by a union. The employees work in the material control and scheduling office at Fullerton, which is separate and enclosed, with other nonunit employees.

The department clerk prepares all shipping documents for Fullerton, performs incidental filing, and operates office equipment. The only contact with unit members occurs when they place shipping documents on the clerk's desk.

The general clerk posts and processes freight receipts and other shipping documents. Occasionally documents are delivered by unit members, but there is no other contact with them.

The traffic rate clerk, sr., arranges all common carrier transportation of parts from the ordnance

division, selects the method of transportation, determining the most economical and fastest method, and selects the appropriate commodity classification for tariffs. Additionally, she maintains the tariff library.

The traffic rate clerk previously performed the same duties as the traffic rate clerk, sr., but for 6 to 9 months before the hearing had been acting as a secretary. Occasionally she fills in for other clerical employees during absences and periods of heavy work loads.

In view of the bargaining history, separate supervision, separate work areas, infrequent or minimal contact with unit members, and closer community of interest with other clericals not claimed by the Union, we find that these classifications have not been accreted to the unit.

The classification of manufacturing clerk sr., also sought, was instituted in 1960, replacing the planning clerk, a classification formerly represented by the Engineers and Architects Association. Work is performed in an office also used by unit receiving inspectors who have common supervision. During the absence of the clerk portions of the work are handled by unit members. The primary work function is assigning master control numbers to incoming parts but includes separating purchase orders, typing, filing "receivers" and control of parts. A grievance filed on the work was withdrawn without prejudice in 1964. For 9 months during the process of moving facilities from Downey to Fullerton portions of the work other than the assignment of master control numbers were routinely performed by unit members.

Notwithstanding some factors which indicate a community of interest with unit employees, we find that the manufacturing clerk, sr. cannot be included in the unit now because of the long history of exclusion.

Clarification of a unit description is appropriate when a new employee classification is created or the employer's operations have expanded if the classifications involved are normal additions to the certified unit.¹³ The majority of the non-model shop employees sought in the UC Petition are salaried, have separate immediate supervision from unit members, spend a major part of their time out of contact with unit members, and are in classifications which have been historically excluded.

In view of the foregoing and the entire record in this proceeding, we find that the employees and classifications sought in the UC Petition are not accretions to the bargaining unit and we shall dismiss the petition.¹⁴

¹³ *Brockton-Taunton Gas Co.*, 132 NLRB 940 Cf *San Jose Motel*, 174 NLRB No 148

¹⁴ In view of our disposition of the UC Petition, we find it unnecessary to rule specifically upon the Employer's motions to dismiss on various other grounds.

ORDER

RM-1401, 21-RM-1403, and 21-UC-33 be, and they
hereby are, dismissed.

It is hereby ordered that the petitions in Cases 21-