

**Roper Corporation Newark Division and Office and Professional Employees International Union and its Local 173, AFL-CIO-CLC, Petitioner. Case 8-UC-51**

November 9, 1970

**DECISION AND ORDER DENYING PETITION TO CLARIFY CERTIFICATION**

BY MEMBERS FANNING, BROWN, AND JENKINS

In a petition for unit clarification filed under Section 9(b) of the National Labor Relations Act, as amended, the Petitioner seeks to have placed within its certified bargaining unit<sup>1</sup> of office and factory clerical employees working at the Employer's manufacturing plant in Newark, Ohio, certain office secretaries, production schedulers, and the steel planner who are not represented by any labor organization. On May 7 and June 23 and 24, 1970,<sup>2</sup> a hearing was held before Hearing Officer Michael E. Temsey for the purpose of taking testimony with respect to the issues raised by this petition. Following the hearing, on July 24, the Regional Director for Region 8 issued an order transferring the case for decision by the Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended. Subsequently, the Petitioner and the Employer filed briefs with the Board.

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.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the parties, 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 Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> On June 19, 1950, the Board certified Office Employees International Union, AFL-CIO, as the exclusive representative of the instant office and factory clerical bargaining unit. However, this certification was not originally reported in the bound volumes of the Board's decisions, except that in a previous Decision and Order Clarifying Certification, *Newark Stove Company* 143 NLRB 583, the Board cited and described the certified bargaining unit

<sup>2</sup> All dates occur in 1970, unless otherwise specified

<sup>3</sup> The basic unit is described as follows

All office and factory clerical employees including chief clerk, timekeepers, cost time clerks, production clerks, office janitors, senior clerks, stenographers, billing machine operators, clerk-typists, junior accountant, junior clerk, messenger, mail clerk, switchboard operator,

3. The Petitioner, since 1950, has been the certified agent for collective bargaining in behalf of an appropriate office and factory clerical unit at the Employer's manufacturing plant in Newark, Ohio.<sup>3</sup> By virtue of the petition for unit clarification, the Union is now seeking a further accretion to its bargaining unit of a group of five secretarial positions, three production schedulers, and one steel planner, all of whom have been historically excluded. The Petitioner contends, in part, that these employment classifications should be added to the bargaining unit because upon the termination of a prolonged strike in 1969, the Employer effected certain changes in work methods and job assignments which have resulted in these disputed employees now performing work formerly done by members of Petitioner's bargaining unit, and therefore they now belong in the unit.<sup>4</sup> As for the five secretaries involved in the petition, the Union further maintains that a substantial reorganization and modification of the corporate executive or managerial structure has abolished, or severely reduced, the confidential nature of these positions, thereby warranting their inclusion in the unit. Finally, according to the Petitioner, the subject production schedulers and the steel planner are currently performing a significant volume of work belonging to the certified unit so as to justify accreting these jobs to the unit.

The Employer urges the dismissal of the petition principally on the ground that, in these circumstances, a proceeding to clarify the bargaining unit is not the equitable or proper procedure for adding the employees in these categories to the existing unit inasmuch as the petition presents a question concerning representation determinable only by a petition seeking an election among these employees. Further, according to the Employer, assuming *arguendo* that the Board should consider that a question concerning representation has not been raised by the Petitioner, nevertheless, the petition must be dismissed as to the production schedulers and the steel planner because they are appropriately excludable from the unit as technical employees, and they lack a community of interest with the employees comprising the existing unit. Finally, the Employer maintains that Petitioner's suitable recourse for disposition of the issues herein

tabulating machine operator, and key punch operator, excluding other employees, guards and supervisors, as defined by the Act.

The above unit was amended in 1963 to also include All employees engaged in operating data processing or computer equipment, which includes data processing systems and procedures analysts, programmers, computer operators, and operators of collateral and related data processing equipment, and including assistants to the payroll and data processing department manager

<sup>4</sup> At the outset, we note the absence of persuasive record evidence tending to substantiate this broad contention. Consequently, we reject it and we will proceed to dispose of the issues presented by the petition through our application of principles and precedents involved in the clarification, or amendment, of bargaining units

should be to the grievance and arbitration provisions in the parties' bargaining agreement rather than to the Board's unit clarification procedures.<sup>5</sup>

*The Secretarial Positions:* The Petitioner seeks to augment the existing bargaining unit by including five secretarial positions involving the following employees: S. Davis, secretary to the production control manager; S. Bibart, secretary to the merchandise manager; C. Warrick, secretary to the director of purchasing; K. Sutton, secretary to the buyers in the purchasing department; and D. Pfeffer, secretary to the director of contract sales.

All of the controlling considerations relate in equal fashion to each such employee and position. In 1950, when the Union was recognized by the Employer's predecessor and certified by the Board as the statutory bargaining agent, there were approximately five secretaries assigned to various corporate executives. Since that time, due primarily to the growth of the Employer's business, the number of secretaries has increased until at the time of the hearing there were 11 employees serving in this classification.<sup>6</sup> Although Petitioner now contends that in 1950, all of the secretaries were excluded by mutual agreement because of their exercise of confidential duties, there is record evidence which tends to belie this contention, e.g., the presently sought positions of secretary to the director of purchasing and secretary to the merchandise manager had been in existence prior to the year of certification and were not included in the unit even though they have never performed as bona fide confidential employees.<sup>7</sup> Contrary to the Petitioner, the Employer maintains that all of the secretarial jobs have been deliberately kept out of the unit because of the parties' basic realization that the secretaries' duties and terms and conditions of employment so substantially differ from those of the other employees in the unit that, as a consequence, there is no prevailing community of interest among them.

We hereby deny the petition as to the secretarial positions because, although the secretarial classification was in existence at the time of the Board's certification in 1950, secretaries did not vote in any election, were excluded by agreement of the parties, and have never been covered by the numerous

bargaining agreements between the parties. Manifestly, then, the five secretaries in issue cannot be included at this time as a proper accretion to the existing unit. Therefore, even if some or all of the secretaries may appropriately be included in the existing office and factory clerical unit, a matter which we need not presently decide, they would be entitled to a self-determination election for that purpose and we would find that the petition for unit clarification raises a question concerning representation as to them not resolvable in this proceeding.<sup>8</sup>

*The Production Schedulers and Steel Planner:* The Petitioner also seeks to have the Board clarify the bargaining unit by including production schedulers F. Cortez, L. Ridgeway, and D. McFarland.<sup>9</sup> As already mentioned, Petitioner's major contention concerning these employees is that the scope and nature of their job responsibilities have been altered recently, with the result that they are now performing a not inconsiderable amount of work formerly done by unit clerical employees. Consequently, Petitioner maintains that they should be accreted to the unit. As in the case of the secretaries, the Employer argues that the petition should be dismissed because Petitioner has raised a question concerning representation not properly resolvable in a unit clarification proceeding. We find merit in the Employer's position.

The record does tend to sustain the Union's view that substantial changes have occurred since December 1969, in the job structure and activities of the production schedulers. Formerly, these employees scheduled production according to management's blocking order concept, which has now been superseded by the economic order quantity system, or shop floor control method.<sup>10</sup> However, from our scrutiny of the record we fail to perceive that these modifications in the Employer's production management concepts and practices have resulted in their doing such amounts of clerical work within the scope of the certified unit that they must necessarily be deemed an accretion thereto. The fact that this evidence delineates the often close on-the-job contacts among department clerks and production schedulers does not detract from the vastly wider responsibilities of the latter category of employees.

As for the steel planner, R. Bell, the Petitioner

<sup>5</sup> Cf. *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261.

<sup>6</sup> Petitioner does not seek to include the remaining six secretaries within the unit, presumably because their positions are concededly exempt pursuant to the Board's customary exclusion of confidential employees.

<sup>7</sup> The Union attempts to elaborate its contention that the five secretaries it seeks somehow perform less confidential duties currently than was true originally because of certain changes as a result of corporate reorganization. We find that this position is not sustainable on the record and even if it were we would find it unavailing in view of our disposition of the issue.

<sup>8</sup> *Westinghouse Electric Corp.*, 173 NLRB No. 51; *General Electric Company*, 144 NLRB 88.

<sup>9</sup> Cortez schedules production for the paint department; Ridgeway for the weld and machine shop and McFarland for the pressroom. Production schedulers perform under the overall supervision of the production control manager and by working under the master assembly schedule determine the quantities and the sequence of the many product components to be manufactured in the various departments. When breakdowns or other delays in production occur, the scheduler is responsible for investigating the cause and working with the appropriate production foremen to eradicate the problem.

<sup>10</sup> In view of our disposition of this case, we consider it unnecessary to describe more fully the various elements of these techniques for industrial planning and control.

requests his inclusion in the bargaining unit for substantially the same reasons and in reference to the cited alterations in production control techniques, which it relies on in the instance of the production schedulers. The steel planner is charged with the function of determining all of the steel requirements for this sizeable plant. At Newark, the Employer manufactures some 700,000 lawn mowers per year, most of which are various types of power-driven machines. In addition, the plant produces large quantities of snow blowers and minibikes. Bell plans for the plant's steel needs both on a short-term and long-term basis, and it is his duty to assure that the necessary tubular, rolled, bar, sheet, coil, and other steel supplies are on hand so as to guarantee the uninterrupted operation of the plant. In connection with the performance of his responsibilities, the steel planner inevitably does some recordkeeping, but the

<sup>11</sup> We note the testimony of employee Harvey in this regard, but, even assuming that the steel planner performs the clerical function of maintaining the "theoretical inventory," we find that this circumstance does not furnish an adequate basis for accreting this classification to the existing unit.

<sup>12</sup> Considering our disposition of the petition herein, we find it unnecessary to reach the questions, as contended by the Employer, that the

clerical aspects of this position appear to us to be minimal.<sup>11</sup> In view of the foregoing, we find, for the same reasons as in the case of the five secretaries sought by Petitioner, that, since the classifications of production schedulers and steel planner existed at the time the unit was certified and they have been historically excluded from the unit, they may not be added to the unit without a self-determination election, assuming these employees otherwise would belong in the existing unit.<sup>12</sup>

In view of the foregoing and the entire record herein, the petition for unit clarification is denied and we shall dismiss the petition.<sup>13</sup>

### ORDER

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

schedulers and planner are also excludable from the unit on the ground that they are technicians, or that they do not have interests in common with the unit employees because of the nature of their work and responsibilities.

<sup>13</sup> *Ladish Co.*, 176 NLRB No 150, *Westinghouse Electric Corp.*, *supra*. Of course, we intimate no conclusions with respect to any of the issues which might be raised in such proceedings.