

**Lufkin Foundry and Machine Company and
A.F.L.-C.I.O., Petitioner.** Case 16-UC-22

February 17, 1969

DECISION ON REVIEW AND ORDER

**BY CHAIRMAN MCCULLOCH AND MEMBERS
BROWN AND JENKINS**

On May 17, 1968, the Regional Director for Region 16 issued a Decision and Clarification of Bargaining Unit in the above-entitled proceeding. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision on the grounds that substantial issues of fact and law are raised as to his findings that 13 of the working foremen at its Lufkin, Texas, plant were not supervisors, and that, in any event, a substantial issue of law is raised as to the propriety of his inclusion of such working foremen in the Petitioner's existing unit in a unit clarification proceeding.

The National Labor Relations Board by telegraphic Order dated August 19, 1968, granted the Employer's request for review. The Employer filed a brief on review in which it incorporated the issues and arguments advanced in its request for review.

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 entire record in this case with respect to the issues under review, including the Employer's request for review and brief on review, and makes the following findings:

The Petitioner filed the instant petition for clarification of its existing bargaining unit seeking to include therein all working foremen and six servicemen at the Employer's Lufkin plant.

On December 11, 1967, the Employer filed a motion to dismiss the petition on the ground that a unit clarification proceeding was improper: that because the disputed employees had been excluded from the certified bargaining unit for such a long period of time with the acquiescence of the Petitioner and its predecessor, they were entitled to a self-determination election on the question of inclusion. The Regional Director denied the motion, concluding that the unit clarification petition was proper, as the unit placement issues being raised had not been resolved in the original certification proceeding and there was no specific reference to the disputed categories of employees in the unit description. The Regional Director therefore considered the merits of the unit placement issues raised. He found 13 of the 35 disputed working foremen to be non-supervisory employees and

clarified the Petitioner's bargaining unit by specifically including them. All other working foremen, he found, were supervisors properly excluded from the unit. He also found to be properly outside the unit six servicemen attached to the commercial gear department on the basis that they had interests diverse from production and maintenance employees.

In requesting review, the Employer contended, as aforesaid, (1) that the Regional Director erred in finding that the aforementioned 13 working foremen were not supervisors, and (2), that in any event, on the facts of this case, they may not be included in the Petitioner's bargaining unit without an election.

The Petitioner's predecessor, A.F.L., was certified in 1949 for a production and maintenance unit at the Employer's Lufkin plant.¹ At the election leading to that certification, working foremen were challenged by A.F.L. on the ground that they were supervisors. However, the number of challenged ballots was insufficient to affect the results and neither the Employer nor A.F.L. filed a request for clarification with the Board to resolve the issues as to the supervisory status of the working foremen. Since February 14, 1950, the effective date of the first contract after issuance of the certification, the bargaining unit has not included working foremen. The record indicates that since that time the jobs of working foremen have remained substantially the same, even though the number of working foremen has increased by about 5 percent. From time to time grievances have been filed with respect to the performance of unit work by working foremen. However, the issue of inclusion of working foremen in the unit was raised for the first time during the Petitioner's negotiations with the Employer for the 2-year contract effective April 21, 1966.

In view of the foregoing and the entire record herein, especially the facts that the disputed 13 working foremen's jobs have been in existence since prior to the 1949 certification of the bargaining unit involved, that the contracts negotiated subsequent to certification of the unit have excluded them, that no question as to their inclusion was raised until 1966, and that no allegation is made that recent changes in their job content have made them non-supervisory unit employees, we find that the request for their inclusion in the unit at this time raises a question concerning representation which may not be resolved in a unit clarification proceeding. Even if we were to agree with the Regional Director upon review of the record that these 13 working foremen are not supervisors as defined in the Act, the proper procedure for obtaining their inclusion in the unit is a petition pursuant to Section 9(c) of the Act seeking an election.² Accordingly, without reaching the issues raised as to correctness of the Regional Director's findings that these 13 working foremen

¹83 NLRB 768.

²See *Sterilon Corporation*, 147 NLRB 219, *General Electric Company*,

are not supervisors, we find that they may remain excluded from the unit and deny the Petitioner's request for clarification. Accordingly, we shall dismiss the petition.

144 NLRB 88, *Westinghouse Electric Corporation*, 142 NLRB 317, *ACF Industries, Incorporated*, 136 NLRB 594; *Westinghouse Electric Corp. (Naval Reactors Facility)*, 133 NLRB 1; *Remington Rand Division of*

ORDER

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

Sperry Rand Corporation, 132 NLRB 1093, and cases cited therein; *Ethyl Corporation*, 118 NLRB 1369. Cf *Newark Stove Co.*, 143 NLRB 583; *Westinghouse Air Brake Co.*, 123 NLRB 859