

**The Zia Company and Bradley S. Barrows,**  
**Petitioner.** Case 28-RC-1827

March 3, 1969

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS  
 BROWN AND JENKINS

Upon a petition duly filed by Bradley S. Barrows, Petitioner herein, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Shirley N. Bingham. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 28, this case was transferred to the National Labor Relations Board for decision. Briefs have been timely filed by the Employer, the Petitioner, and the Intervenor.<sup>1</sup>

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 case 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 record in this case, 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 Petitioner is an individual claiming to represent certain employees of the Employer.

3. In view of our findings below, no question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

#### A. The Contentions of the Parties

The Employer is a New Mexico corporation primarily engaged in maintenance and support functions for the United States Atomic Energy Commission and other defense-related organizations at locations in New Mexico and elsewhere. Its operation at the Los Alamos Scientific Laboratory in New Mexico, under contract with the Atomic Energy Commission, is the sole location involved in this proceeding. Of the Employer's 950 employees at Los Alamos, 750 are represented along craft lines in 12 separate units by 11 different labor organizations,

<sup>1</sup>International Union of Operating Engineers, Local Union No 953, AFL-CIO, herein referred to as Intervenor, was permitted to intervene at the hearing on the basis of its current contract covering approximately 110 of the Employer's 950 employees, including the employees sought under the instant petition.

while the remainder, mostly professional, technical, and clerical personnel, are unrepresented. Petitioner, a machinist employed in the Machine Shop, seeks to sever a purported craft unit of approximately 13 "general machinists" (i.e., himself and his 12 fellow Machine Shop employees) from the existing Intervenor's unit of 110 employees. The Intervenor's predecessor was certified in 1948 in a unit including, *inter alia*, ". . . all mechanics and repairmen, lathe and shop work, fork lifts, partsmen, firemen, oilers, greasers, mechanic and welder helpers . . ." The Intervenor (or its predecessor) and the Employer have negotiated seven collective-bargaining agreements since that time, most recently in mid-1968, all of which covered employees doing machine shop work.<sup>2</sup>

The Employer, while conceding the craft status of the Machine Shop employees, opposes severance on several grounds: the creation of another craft group will increase the possibility of disruption in the production process, a particularly undesirable happening in view of Zia's involvement in defense work; the Machine Shop has never established and does not possess a separate identity within the Intervenor's unit, the employees sought have been adequately represented by the Intervenor for 20 years, the Employer will lose operating flexibility if it cannot transfer employees between the Machine Shop and other sections of the Intervenor's unit when necessary; and, finally, Petitioner is unqualified to represent a craft, or for that matter, any unit. The Intervenor adopts a position basically similar to that of the Employer, except that the Intervenor does not concede the machinists' craft status, claiming instead that they merely possess special skills which are not unique within the unit. For the reasons set forth below, we find merit in the contentions of the Employer and the Intervenor.

#### B. Background

The Machine Shop occupies one-half of a large room, with the Sheet Metal Fabrication Shop as the other tenant. The room is apparently not partitioned, but there are separate doors on either side. Ninety percent of the machinists' time is spent in fabricating to blueprint specifications metal parts requiring tolerances of less than 1/64th of an inch, in connection with the AEC's weapons testing program;<sup>3</sup> the rest of their time is devoted to unit

<sup>2</sup>Under the contract which expired on June 30, 1968, and presumably under the previous agreements as well, the employees working in the Machine Shop were classified as "Mechanics and Welders," along with 39 other unit employees serving as automotive mechanics, heavy equipment mechanics, and the like, some of whom perform machinist work part-time. In the new agreement, which had not been executed at the time of the August 1968 hearing in this case, the category of "Operator Machinist" appears for the first time. Only Machine Shop employees currently qualify for the classification by virtue of spending more than half their time performing machinists' work.

<sup>3</sup>Between 1947 and 1953, the Machine Shop was considered "an

repair work. Machine tools exist in other unit shops. In the Heavy Equipment Shop, where the fabricating work does not relate to the weapons testing program, these tools are used occasionally for work involving tolerances in the thousandths of an inch.

The Machine Shop enjoys a significant degree of integration with the other departments within the Operating Engineers' unit. Although the Employer does not maintain any formal bidding plan, it encourages other unit employees with experience and promise to bid for machine shop positions; in fact, about half the present Machine Shop employee complement transferred there from elsewhere in the unit.<sup>4</sup> If the weapons testing program slackened and a layoff were imminent in the Machine Shop, the Employer would transfer to other jobs within the parent unit any machinist (there are several) who possessed relevant unit skills, i.e., heavy equipment operator, diesel mechanic, etc. Moreover, machinists with special skills have been assigned to nonmachinist work elsewhere in the Operating Engineers' unit when the need for their services has arisen.<sup>5</sup> On occasion, unit mechanic-welders from other unit departments come into the Machine Shop, either on a repair call or to use one of the several pieces of machining equipment which have no counterpart elsewhere in the unit; other unit members also deliver oversize items to the Machine Shop for machining.

As noted above, the Employer makes the concession in its brief that the proposed unit "does involve skilled journeyman craftsmen performing many functions of their craft on a nonrepetitive basis." The record evidence as to the existence of a craft skill is less conclusive than the Employer's admission would seem to suggest. Thus, journeyman status is not a condition of employment and there is no apprenticeship or formal on-the-job training program for machinists. Moreover, for years the Machine Shop foreman was not a machinist, indicating that the Employer recognized no need for

skilled supervision of the work being done. On the other hand, the Employer apparently expects the machinists to acquire, at some point in their tenure, about \$1,000 worth of machinists' tools and equipment.

The record does not disclose any attempts on the part of the machinists to secure independent recognition prior to 1968. In early April, Petitioner was chosen to present to the Intervenor for inclusion in the latter's bargaining platform for the 1968 contract negotiations a number of proposals of specific benefit to machinists. These included, *inter alia*, a revised classification (from mechanic-welder to machinist general), a machinists' apprenticeship program, a wage increase, premium pay, supervision by qualified machinists on both shifts, hospitalization coverage, and sick leave benefits, now enjoyed by only some of the departments in the Intervenor's unit.<sup>6</sup> The Intervenor rejected almost all of the Machine Shop's proposals, but did bargain for, and obtain, at least one of the machinists' stated objectives — a revised classification specifically intended for application to machinists. Petitioner, it should be noted, sat on the Intervenor's negotiating committee during the 1968 negotiations.<sup>7</sup> While negotiations were still in progress, on July 12, Petitioner, acting at the behest of fellow machine shop employees, filed the instant petition.<sup>8</sup>

We find, upon consideration of the evidence before us, that the unit sought is inappropriate for severance purposes under the standards established by the *Mallinckrodt*<sup>9</sup> case, even assuming that many of the machinists are performing craft functions. While it is true that much of the work of the Machine Shop employees involves the fabrication of parts for the weapons program, in contrast to the repair and support operations performed by the other members of the Intervenor's unit who perform machine shop work, the skills employed by the machinists are essentially similar to those utilized by the other employees in the unit who operate machine tools, the chief differences being the machinists' greater experience in handling work requiring close tolerances and their full-time, rather than part-time, involvement in machine shop work. Furthermore, as pointed out above, the Machine Shop is integrated into the operations of the rest of the Intervenor's unit. The Machine Shop performs

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incidental support operation" of the Employer's Transportation Division, concerned with making parts for equipment (mostly automotive), at times from blueprint specifications. In 1953, the Machine Shop was joined with the Stationary Equipment Shop as part of the Technical Area Division. The Machine Shop operation was minimal until 1960, when the Employer became involved in support and operations work for the AEC's underground weapons testing program, since that time, the volume of work funneled into the Machine Shop has increased on a "logarithmic" curve. In mid-1967, the Employer established the Machine Shop as an independent department within the Technical Area Division, and moved it to its present quarters.

<sup>4</sup>One transferee who did not perform competently was returned to his original position at the end of 3 weeks.

<sup>5</sup>Twice during the year preceding the hearing, the Employer, which does not employ millwrights as such, assigned machinists who had millwright experience to help assemble scientific equipment requiring precise leveling and alignment. On these occasions the machinists worked with other unit employees. The Employer has also utilized the equipment operator skills of some machinists to assist in snow removal.

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<sup>6</sup>In the 1963 negotiations, it was agreed that each individual shop within the Intervenor's unit could obtain sick leave benefits (with a collateral wage reduction) if a majority of the shop's employees so voted. The then-combined Machine and Stationary Equipment Shop rejected sick leave. During the 1968 negotiations, a sick leave program was offered only to the unit as a whole, which voted against it. Those shops which had previously opted for the program, however, continued to enjoy it.

<sup>7</sup>The record does not disclose whether Machine Shop employees participated in previous contract negotiations as bargaining committee members, or if they have been involved in the Intervenor's internal operations.

<sup>8</sup>During the spring, Petitioner and other machinists also informed management officials of their dissatisfaction with the Intervenor's representation of their interests and with the prevailing wage rates.

<sup>9</sup>162 NLRB No. 48.

unit repair work. It serves as an avenue of promotion for unit employees, while on a reciprocal basis the Intervenor's unit stands ready to absorb machinists with unit skills in time of layoff in the Machine Shop. Some unit members also work in the Machine Shop from time to time, both repairing and operating the machine tools and equipment. This flexible arrangement is clearly of benefit to the machinists and the Employer, affording the former an opportunity to bump into the parent unit, and so avoid layoff, and the latter considerable latitude in work assignments. Moreover it demonstrates that a meaningful community of interest exists between the machinists and many of their fellow operating engineers.

Another important consideration is that, so far as the record shows, the employees sought by the Petitioner have been adequately represented since 1947 by the Intervenor as part of the Operating Engineers' unit. Not until late 1967 or 1968 did they attempt to gain recognition as an independent entity. There is no evidence to indicate that the Intervenor has acted in disregard of the machinists' interests or has failed to give their demands full and fair consideration. Certainly, the simple fact of

refusal to adopt all the demands is not proof of neglect. Indeed, the Intervenor gave tangible evidence of its concern by appointing Petitioner to sit on the Intervenor's negotiating committee, a position which Petitioner accepted, and by incorporating in its bargaining platform (and obtaining) the machinists' demand for titular recognition in the bargaining contract.

As a final consideration, we note the material, although not in itself determinative, fact that Petitioner, a machinist, has failed to demonstrate any special qualifications for serving as a collective-bargaining representative for the machinist employees involved herein.

In view of the foregoing evaluation, we conclude that severance is not warranted. Accordingly, we shall dismiss the petition.

#### ORDER

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