

**Remington Rand Division of Sperry Rand Corporation, Employer-Petitioner and Local 325, International Union of Electrical, Radio and Machine Workers, AFL-CIO. Case 3-RM-466**

May 24, 1971

**DECISION ON REVIEW AND DIRECTION OF ELECTION**

BY CHAIRMAN MILLER AND MEMBERS FANNING AND BROWN

On January 21, 1971, the Acting Regional Director for Region 3 issued his Decision and Order in the above-entitled proceeding, in which he dismissed the Employer's petition on the ground that the unit described by the petition constituted an accretion to an existing unit represented by the Union. 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 Acting Regional Director's Decision, contending, *inter alia*, that the employees described in the petition are not an accretion to an existing bargaining unit for the reason that they work in classifications outside the scope of that unit.

On February 22, 1971, the National Labor Relations Board by telegraphic order granted the request for review. Thereafter the Employer filed a brief on review.

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

The Employer seeks an election in a unit consisting of all office clericals of the division accounting and division marketing departments at its Herkimer, New York, operation, including division credit and collection clerks, clerk typists, division machine accounting clerks, division accounting clerks and analysts, division comptroller secretary, division marketing clerks and secretaries, and division layout draftsmen.<sup>1</sup>

The record reflects that the Employer is a New York State corporation engaged at Herkimer, New York, in the manufacture and sale of library equipment. On July 2, 1962, the Employer and the Union, following Board certification, entered into a collective-bargaining agreement which defined the unit as being the "employees at the company's plant located at 801 Park Avenue, Herkimer, New York, consisting of 'all office clerical employees, industrial engineers and design engineers em-

ployed at the Company's Herkimer, New York plant, excluding all other employees, confidential employees, managerial employees, professional employees and all guards and supervisors as defined in the Act.'" At this time, the division marketing employees were located at Herkimer but they were never included in the contract, nor were any of the terms and conditions of employment expressed in the contract extended to them.

In 1963, the Union was certified as the collective-bargaining representative in the same unit as covered by the 1962 contract. Thereafter, the parties negotiated and executed successive collective-bargaining contracts covering the same unit at the Employer's Herkimer plant. Finally, in April 1969 the parties entered into the current contract covering these same employees at the Herkimer plant "and all other facilities of the plant within a 25 miles radius of the Main Office in Herkimer, New York." (Emphasis supplied.) This last contract expires June 22, 1971.

In April 1969, the Herkimer operation became a separate division of Sperry Rand Corporation, Remington Rand Division, known as the library bureau division, and Herkimer became the location of the division headquarters. Subsequently, in December 1969, the division accounting department was relocated from Marietta, Ohio, to Herkimer.

The Acting Regional Director concluded that the employees described in the petition were an accretion to the existing unit because the Union has been certified as the representative of the Employer's "office clericals" and the division marketing and division accounting employees are "office clericals" who work in contact with, interchange with, share common supervision with, and perform duties similar to the office clericals already represented by the Union.<sup>2</sup>

While we agree with the Acting Regional Director that a substantial community of interest exists between unit employees and the division clericals whom the Union desires to represent in the existing unit, we do not believe in the circumstances of this case that the division clericals may be added to this unit without a self-determination election. It is clear from the record that the parties contemplated a unit including em-

<sup>2</sup> The record reveals, and the Acting Regional Director found that there exists a community of interest among the employees currently represented by the Union and the division marketing and division accounting employees. Thus, the duties performed by the plant accounting employees and the division accounting employees are essentially the same. Both groups perform general accounting tasks, including the processing of payrolls, posting of accounts receivable and accounts payable, and cost accounting. Likewise, there have been at least two instances of permanent interchange between division and plant employees, at least two instances of division clerical work being done by plant accounting employees, and at least two or three instances of plant clerical work being done by division employees. Also, the record shows that five plant accounting employees and two division accounting employees work in the same room under common supervision. However, it appears that this was dictated by soundproofing requirements of the accounting machines.

<sup>1</sup> The unit description appears as amended at the hearing.

ployees performing office clerical functions in support of the Herkimer plant operations only and did not intend the inclusion of office clerical employees working in support of the operations of the division. Thus from the initial collective-bargaining agreement, the unit was described in terms of "employees at the Company's *plant*. . . ." (Emphasis supplied.) Further evidence that only employees working in support of operations of this plant were contemplated by the original agreement is the fact that the division marketing employees, who were present at Herkimer at that time, were never extended the benefits of the original nor any subsequent agreement. Moreover, when the Union sought to extend coverage of the agreement to a draftsman several years ago, the Employer refused to include the draftsman because "he was a member of the division marketing staff."

The subsequent certification<sup>3</sup> and collective-bargaining agreements, likewise, failed to include the division marketing employees, and additionally, when the geographic boundaries of the contract coverage were extended in 1969, the extension was expressed as ". . . all other facilities of the *plant* within a 25 miles radius of the *Main Office* in Herkimer, New York." (Emphasis supplied.) At that time, the main office of the *plant* was at Herkimer; however, the main office of the division then administering the Herkimer plant was in New York City.

Therefore, it is evident from the 1963 certification, the express terms of the contracts, and the collective-bargaining history with respect to division marketing employees that neither the Board nor the parties intended the inclusion of any division office clerical employees.<sup>4</sup>

On the basis of the foregoing and the entire record in this case, we conclude that there is a question concerning representation among the division marketing and division accounting clerical employees which can only be resolved by providing these employees an opportunity by a self-determination election to express their desires with respect to being included in the bar-

gaining unit currently represented by the Union. *Pho-type, Inc.*, 145 NLRB 1268. Accordingly, we shall direct an election in the following voting group:

All office clericals of the division accounting and division marketing departments, including division credit and collection clerks, clerk typists, division machine accounting clerks and analysts, division comptroller secretary, division marketing clerks and secretaries, and division layout draftsmen.

If a majority of the employees in the above voting groups cast their ballots for the Union, they will be taken to have indicated their desire to constitute a part of the existing unit currently represented by the Union, and the Union may bargain for such employees as a part of that unit. If a majority of them vote against the Union, they will be taken to have indicated their desire to remain outside the existing unit, and the Regional Director will issue a certification of results of election to that effect.

[Direction of Election<sup>5</sup> omitted from publication.]

MEMBER BROWN, dissenting:

Contrary to my colleagues, I agree with the Regional Director that the division marketing and division accounting employees constitute an accretion to the existing certified office clerical unit represented by the Union. Although the majority decision concedes that a substantial community of interest exists between the unit employees and the division clericals, my colleagues refuse to include them in the unit without a self-determination election.

While it is true that the division marketing employees were employed at the Herkimer plant at the time of the certification and were never extended the benefits of subsequent agreements between the Union and the Employer, it is likewise true that the division accounting employees, who outnumber the division marketing employees, were not employed at the Herkimer plant until 8 months after the latest contract was executed. Under our established accretion rule, they would be added to the existing unit on the basis of their acknowledged community of interest. In these circum-

<sup>5</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 3 within 7 days of the date of this Decision on Review and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>3</sup> The 1963 certification of Representative described the unit as "All office clerical employees, industrial engineers, and design engineers at the Company's Herkimer, New York plant."

<sup>4</sup> Moreover, with respect to the division marketing employees, it is established Board policy that a group of employees will not be found to be an accretion to a certified unit where that group was in existence at the time of the certification but not included in the unit when the certification issued. *The Bendix Corporation*, 168 NLRB 371, *Gould-National Batteries, Inc.*, 157 NLRB 679. The postcontract transfer of division accounting employees to Herkimer would not in itself dictate accretion. See *Patterson-Sargent Division of Textron, Inc.*, 173 NLRB No. 203, where "headquarters" clerical employees, newly located across the street from a plant whose office clericals were already represented, were not accreted to the existing unit. Although there are distinct reasons for a *separate unit* in *Patterson-Sargent*, as our dissenting colleague contends, the question *here* is merely accretion to a preexisting unit as distinguished from an opportunity to vote on inclusion or exclusion in a context where bargaining history and the Employer's administrative setup do not *necessitate* accretion. In this middle-of-the-road situation the *Patterson-Sargent* result has significance.

stances, I would not exclude the division marketing employees, whose interests also are concededly related to the unit employees, merely because they were in existence at the time of the Board's original certification.

I agree with my colleagues that the postcontract transfer of division accounting employees to Herkimer would not in itself dictate accretion. However, in this case we have much more. As acknowledged by the majority decision, the facts show that "a substantial community of interest exists between unit employees and the division clericals whom the Union desires to represent in the existing unit." Thus, as my colleagues detail in footnote 2 of their majority decision, the duties performed by the plant accounting employees and the division accounting employees are essentially the same; there are at least two instances of permanent interchange between division and plant employees, two instances of division clerical work being done by plant accounting employees, and two or three instances of

plant clerical work being done by division employees; and some plant accounting employees and division accounting employees work in the same room under common supervision. In contract, in *Patterson-Sargent Division of Textron, Inc.*, 173 NLRB No. 203, relied on by my colleagues and which I signed, the functions of the "headquarters" clerical employees were separate and distinct from the clerical functions performed by the employees in the existing unit; there was no evidence of any interchange nor was there practically any contact between the two groups of employees; the two groups were geographically separate; and, significantly, the group sought to be accreted outnumbered the existing unit complement by a margin of four to one.

The Board must decide in each case which unit, under all the circumstances, best contributes to effective collective bargaining. I would find that these employees are normal accretions to the existing office clerical unit and would therefore dismiss the petition herein.