

Wallace-Murray Corporation, Schwitzer Division, Employer-Petitioner and Local Union No. 1148, United Steelworkers of America, AFL-CIO. Case 25-UC-35

August 27, 1971

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS BROWN
AND KENNEDY

On March 9, 1971, the Regional Director for Region 25 issued a Decision and Clarification of Unit in which he granted the Employer-Petitioner's request to exclude certain employees referred to as "guards" from the Union's existing contractual bargaining unit. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely Request for Review of the Regional Director's Decision on the grounds that he departed from Board policy. The Board, by telegraphic order, dated June 15, 1971, granted 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 considered the entire record in this case and makes the following findings:

In 1937 the Union's predecessor was certified by the Board as the bargaining representative for production employees, excluding, among other, "watchmen." From 1937 to 1943 the parties executed collective-bargaining agreements covering such unit, specifically excluding "watchmen." However, in their 1943 contract and in all subsequent contracts, the

parties have specifically *included* "watchmen" in the contract unit. In the 1967 agreement the parties, for the first time, made reference to the watchmen as "guards", and this terminology was carried over to the current (1970 through 1973) collective-bargaining agreement. The parties stipulate that the "guards" in question (formerly referred to as watchmen) are in fact guards within the meaning of Section 9(b)(3) of the Act.

The Regional Director clarified the unit to exclude the guards because a mixed unit of guards and nonguard employees contravenes congressional policy, and because of the Board's policy of clarifying units whether Board-certified or voluntarily established. However, we are of the opinion that it will not serve the purposes of the Act to use, at this time, the unit clarification procedure to modify a unit which is clearly defined in the current bargaining agreement. Moreover, there is no dispute between the parties as to the guard status of the individuals involved or as to their inclusion in the contract unit. As stated, the Employer has for many years executed collective-bargaining agreements with the Union covering the existing unit which includes the "guards", with knowledge that the Union does not exclusively represent guard employees. The Employer now seeks, midway during the term of the current agreement, to obtain a Board clarification of the unit to exclude the "guards." To entertain the Employer's petition for clarification at this time, in these circumstances, would, in our view, be disruptive of a bargaining relationship voluntarily continued by the Employer when it executed the existing contract with the Union.

Accordingly, without prejudice to the filing of a clarification petition at an appropriate time, we hereby dismiss the Employer's petition herein.¹

¹ This Decision is not at variance with the recent decision in *Peerless Publications, Inc.*, 190 NLRB No. 130, as in that case the unit

clarification petition was filed shortly before the expiration of the collective-bargaining agreement.