

McDonnell Douglas Astronautics Company—Western Division, and the Douglas Aircraft Company, Components of the McDonnell Douglas Corporation and Southern California Professional Engineering Association, Inc., Petitioner. Case 21-UC-46

December 21, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

On March 15, 1971, the Petitioner filed a petition to clarify a bargaining unit currently recognized by component companies of McDonnell Douglas Corporation¹ by including employees doing scientific programming and related work for McDonnell Douglas Automation Company's western location. A hearing was held on May 21, 1971, before Hearing Officer Theodore B. Horn. The parties appeared and participated at the hearing. On June 23 the Regional Director for Region 21 issued an order transferring the case to the Board. Briefs were filed by the Employer and the Petitioner.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in connection with this proceeding 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.

¹ The contracting parties to the current agreement which runs from November 25, 1968, to November 14, 1971, are, "McDonnell Douglas Astronautics Company—Western Division and Douglas Aircraft Company, components of the McDonnell Douglas Corporation, a Maryland corporation with its principal place of business in St. Louis, Missouri" and the "Southern California Professional Engineering Association."

² The contract specifically covers "professional engineers represented by the Association" and the recognition clause, which appears immediately after that statement reads

Section 1—Employees Represented

The company recognizes the Association as the exclusive collective bargaining agent for such of its employees as are now or hereafter classified in the job classifications set forth in Appendix "A" attached

Upon the entire record in this case the Board finds:

The existing contract unit is based upon a number of Board certifications dating back to 1945.² As stipulated by parties, these "certifications certify only employees in engineering departments, divisions and subdivisions of the Company." However recognition has also been extended by contract to functions not within engineering departments.³ Also stipulated is the fact that McDonnell Douglas Automation Company is a "new Company" of the McDonnell Douglas Corporation, created to provide computer services to commercial customers on a national scale, as well as continuing to make its services available to all components of McDonnell Douglas Corporation. The McDonnell Douglas Automation Company—herein referred to as MCAUTO—was formed in November 1970 as a result of the merger of McDonnell Automation Company (St. Louis, Missouri), a company in existence since 1960, and the computer service organizations of Douglas Aircraft Company (Long Beach, California) and McDonnell Douglas Astronautics Company (Huntington Beach and Santa Monica, California). The latter two components of McDonnell Douglas Corporation have a history of collective bargaining with the Petitioner dating back to 1945. MCAUTO, since November 1970, is also a component of McDonnell Douglas Corporation.

On or about December 28, 1970, MCAUTO was staffed at its western location by more than 500 salaried employees from Douglas Aircraft Company and McDonnell Douglas Astronautics Company. One hundred fourteen of these employees were represented by the Petitioner; 88 of these were engaged in scientific programming work and were transferred to the Scientific Programming branch of MCAUTO. As a group the 114 previously represented employees were transferred as follows:

hereto and made a part of this Agreement who are employed in the following groups (i) those working in locations of the Douglas Aircraft Company which previously constituted the Aircraft Division of the Douglas Aircraft Company, Inc., (ii) those working in locations of the McDonnell Douglas Astronautics Company—Western Division which previously constituted the Missile and Space Systems Division of the Douglas Aircraft Company, Inc., (iii) those working in the Tulsa Division of the Douglas Aircraft Company

Appendix A reads as follows.

In addition, "Field" counterparts for most of these classifications are listed.

³ Stipulations 3 and 6 of Joint Stipulations, Exhs. 1-33 Removal of some employees from the unit occurred early in 1970 with respect to those deemed to have acquired managerial functions Stipulation 32.

<u>From</u>		<u>To (MCAUTO):</u>	
362	Computing Analyst	387	Technical Computing Analyst
363	Computing Engineer	388	Technical Computing Engineer
364	Computing Specialist	389	Technical Computing Specialist
715	Associate Engineer/ Scientist	386	Product Engineer-Associate
716	Engineer/Scientist	392	Product Engineer
719	Senior Engineer/ Scientist	377	Product Engineer Senior

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The represented employees transferred from Douglas Aircraft Company were from its Scientific Programming Branch and engineering department; those from McDonnell Douglas Astronautics Company were from its Information Systems Subdivision, also known as Information Systems Division, and were engaged in functions which were *not* within engineering departments. All were reclassified at MCAUTO to nonrepresented classifications.⁵

At the hearing the Employer moved to dismiss, contending that the subject matter was inappropriate for a UC petition. This motion was referred to the Board. It also contended that the new classifications are not covered by Appendix A of the current agreement⁶ and belong to a "totally new and independently operating company" not covered by certification or agreement, hence "the Corporation cannot recognize the Association as to this extension to MCAUTO." In its brief the Employer has renewed these positions, contending that the only proper solution is a self-determination election in an "appropriate unit within MCAUTO."⁷

Petitioner contends that the Employer has vacillated in its reasons for considering these employees outside the bargaining unit: as due to their removal from an engineering department, as due to their reclassification in classifications not included in Appendix A of the contract, and as due to their work since transfer being for a new and different company. Emphasizing that the reclassifications have entailed

no change in work, location, or supervision—facts which are also a matter of stipulation⁸—Petitioner seeks to prevent erosion of the bargaining unit by "arbitrary" reclassification. It views as frivolous the Employer's contention that accretion is the true motive of Petitioner.

The problem here resolves itself into one of organizational transfer of employees from existing component companies of the basic McDonnell Douglas Corporation—transfers apparent on paper only—to job codes of obvious similarity in a "new" component company, McDonnell Douglas Automation Company (MCAUTO). Actually the "new" component is not functionally new, but only a creature made up of existing scientific programming facilities from two existing components, who have long bargained with the Petitioner, and of the scientific programming operations of McDonnell Automation Company, a Missouri corporation in this family of companies. Despite the complete operating autonomy which each of these companies is said to have,⁹ there is nothing on this record which in any way suggests that the companies involved are not part of an organization that is an integrated whole with ultimate common control. In these circumstances the transfer of employees between component companies, reflecting no change whatever in their work location and admittedly no substantial change in their supervision—certainly none that is ascertainable on the record before us—cannot be viewed as effectively

⁴ Job code 387, "Technical Computing Analyst," was in existence before these transfers "and populated within the Company" by employees not represented by the Petitioner. At the hearing the parties agreed, by stipulation 34, that no other Union claims to represent the disputed classifications.

⁵ The parties stipulated that all 114 so transferred were informed that they would not be within a collective-bargaining unit, and that three additional employees offered such transfer elected to remain "with the Company in a represented status."

⁶ See quotation of Appendix A in fn 2, which confirms the fact that job code 387 and the five new classifications do not appear in Appendix A.

⁷ MCAUTO has 1250 employees at the western location, including "427 nonrepresented salaried employees other than those at issue and their supervision."

⁸ The stipulations show that all but two transferees do the same work for MCAUTO, with the only change in actual work of these two being that they spend 5 to 10 percent of their time doing work for specific clients with duties no different, that no transferee has physically moved his place of work since the transfer and that MCAUTO has no "tangible plans" to move them or "to utilize or construct or lease or purchase" different premises to house "the involved classifications", and that supervision of scientific programmers at MCAUTO is substantially the same as it had been.

⁹ The Employer contends that MCAUTO implements its own personnel and labor relations policies and is a separate and distinct employer just as Douglas Aircraft Company and McDonnell Douglas Astronautics Company are each separate, distinct employers, but admits that MCAUTO comes under the labor relations staff and policies of the Corporation with respect to contracting for health and insurance benefits.

removing the employees involved from the currently recognized bargaining unit.¹⁰

Accordingly we deny the Employer's motion to dismiss and shall clarify the currently recognized bargaining unit by specifically including employees transferred from job codes 362, 363, 364, 715, 716, 719, to MCAUTO job codes 387, 388, 389, 386, 392, 377.¹¹

ORDER

It is hereby ordered that the currently recognized bargaining unit be, and it hereby is, clarified by specifically including in it the employees doing scientific programming and related work who were transferred on December 28, 1970, to MCAUTO job codes 387, 388, 389, 386, 392, and 377.

¹⁰ See *S D Warren Company*, 164 NLRB 489, where clarification was granted though work location was changed *General Electric Company*, 170 NLRB 1272, cited by the Employer, involved employee mergers at a new location, with major personnel changes as to office clerical employees and conflicting union claims as to warehouse employees, hence elections were directed *Chrysler Corporation*, 140 NLRB 1024, also cited by the Employer, involved purchase of the automotive assets of Briggs, an

apparently unrelated corporation, with an attempt—some 8 years and several transfers of physical location later—to add a small group of clerical employees to a technical unit of Chrysler solely on the ground that the clericals in question had originally been represented as part of a unit of engineering clericals at Briggs.

¹¹ See *Brotherhood of Locomotive Firemen and Enginemen*, 145 NLRB 1521, 1523.

Appendix A reads as follows:

CODE NO.	CLASSIFICATION	SALARY GRADE	40 HOURS	
			MIN.	MAX.
715	Associate Engineer/ Scientist	2	624	980
362	Computing Analyst	1	551	948
363	Computing Engineer	4	675	1132
364	Computing Specialist	8	990	1513
258	Contract Specifications Engineer	4	675	1132
904	Contract Specifications Engineer---Senior	7	898	1418
260	Coordinator	5	727	1190
997	Customer Service Representative	1	551	948
996	Customer Service Representative ---Senior	7	898	1418
264	Development Liaison Engineer	6	793	1288
721	Engineering Drawings Checker	5	727	1190
706	Engineering Research Assistant (Loc. A52 only)	1	551	948
716	Engineer/Scientist	5	727	1190
717	Engineer/Scientist Specialist	8	990	1513
731	Flight Test Analyst	2	624	980
277	Flight Test Engineer	7	898	1418
995	Industrial Writer	2	624	980
903	Launch/Test Engineer	5	727	1190
902	Launch/Test Engineer---Senior	8	990	1513
284	Liaison Engineer	5	727	1190
718	Principal Engineer/Scientist	non- graded	1634	2338
368	Production Designer	5	727	1190
307	Project Coordinator (Dept. C1--657 only)	9	1070	1603
993	Publications Editor	8	990	1513
719	Senior Engineer/Scientist	11	1339	1939
994	Staff Writer	5	727	1190
366	Tool Design Engineer (Dept. C1--657 only)	3	639	1046
367	Tool Design Engineer---Senior (Dept. C1--657 only)	5	727	1190
329	Weight Control Engineer	5	727	1190

In addition, "Field" counterparts for most of these classifications are listed.