

**Monsanto Research Corporation, Mound Laboratory,
Employer-Petitioner and International Union,
United Plant Guard Workers of America, Local Union No. 146 and Oil, Chemical and Atomic Workers
International Union, Local No. 7-4200, AFL-CIO.
Case 9-UC-48**

February 7, 1972

**DECISION AND ORDER
CLARIFYING CERTIFICATION**

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

Upon a petition for clarification of unit duly filed by Monsanto Research Corporation on October 23, 1970, a hearing was held on January 27, April 6 and 7, May 11, and June 3, 1971, before D. Patton Pelfrey, Hearing Officer of the National Labor Relations Board. On June 3, 1971, the Regional Director for Region 9 issued an order transferring the case to the Board for decision. Thereafter briefs were timely filed by the Petitioner and International Union, United Plant Guard Workers of America, Local Union No. 146.

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 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.

Upon the entire record in this case, the Board finds:

The petition herein filed seeks clarification of a unit of the Employer's employees at its Mound Laboratory at Miamisburg, Ohio, which unit was certified by the Board in 1949 in behalf of the Oil, Chemical and Atomic Workers International Union, Local No. 7-4200, AFL-CIO, herein called the OCAW. The Employer and the OCAW request a clarification which would find that the classification of firefighters should be added to those already included in the unit represented by OCAW. The International Union, United Plant Guard Workers of America, Local Union No. 146, herein called UPGWA, contends, however, that a portion of the duties assigned to the firefighters constitutes an integral part of the UPGWA's work jurisdiction. UPGWA therefore moves that the Employer's petition be dismissed because it involves a work assignment dispute not cognizable under Section 9(b) of the Act or, in the alternative, that the Board grant its motion to stay further proceeding pending action by a United States District Court on the UPGWA's action to compel enforcement of an arbitration award which assigned the work to the UPGWA.

The record discloses that the Employer decided, sometime early in 1968, to establish a full-time firefighting force to protect its installation. In April 1968 the Employer began discussions with OCAW regarding the establishment of the firefighting force and over the next year and a half had some 25 meetings with that Union. In May or June 1969 the Employer and OCAW reached agreement on the compensation to be paid the firefighters. On August 18 the Employer assigned eight employees from the OCAW bargaining unit to the firefighting classification for training and on November 1 the full-time firefighting force went into operation.

On June 2, 1969, the Employer began discussions with the UPGWA regarding the duties of the firefighter classification, and further discussions were held thereafter. The UPGWA regarded the assignment of three of the duties of the firefighters to be a violation of its collective-bargaining contract with the Employer. On August 21, 1969, the UPGWA therefore invoked the grievance procedures of the contract and filed a grievance protesting the transfer of fire prevention responsibility to the firefighters; on September 18 the UPGWA filed a second grievance protesting the assignment of the task of transporting sick and injured employees to the firefighters; and on November 3 the UPGWA filed a third grievance protesting the assignment of the task of inspecting fire extinguishers to the firefighters.

The Employer and the UPGWA processed the grievances through the grievance procedures and were unable to reach agreement. The parties therefore submitted the grievances to an arbitrator. OCAW was aware of the arbitration proceedings, but did not participate in them. On September 23, 1970, the arbitrator issued a decision awarding both the work in dispute and the employees to the UPGWA's bargaining unit. Thereafter the UPGWA filed an action in the United States District Court for the Southern District of Ohio, Western Division, requesting enforcement of that portion of the arbitrator's decision awarding the work to the UPGWA bargaining unit. It did not, however, request enforcement of that portion of the decision awarding the employees to its bargaining unit.

As has been indicated, above, the UPGWA contends that the dispute herein is, in essence, a jurisdictional dispute not cognizable under Section 9(b) of the Act. The UPGWA therefore asserts that the Board is without jurisdiction under Section 9(b) and requests that the petition herein be dismissed.

We think the Board's decision in *McDonnell Company*¹ is determinative of this issue. There, as here, the Board was concerned with what was essentially a unit issue which had arisen because the employer had created a new classification of employees to perform duties which, to some extent, had been performed by

¹ 173 NLRB 225

employees in different bargaining units. Inevitably such a situation gives rise to disputes over assignments of duties, but this does not alter the fact that the core of the controversy is the unit to which the new classification properly belongs. We shall therefore dismiss the UPGWA's motion to reject the petition because the case may involve some elements of a work assignment dispute.

The UPGWA has also filed a motion to stay further proceedings pending the decision of the United States District Court in its action to enforce the arbitration award. Again we think the *McDonnell Company* case, *supra*, disposes of the issue. Here as in that case, our failure to assume jurisdiction may well result in extended litigation and ultimately present the court with a difficult choice between inconsistent arbitration awards, for the OCAW has made it clear that it regards the firefighting employees as within its unit and that its collective-bargaining contract covers them. On the other hand, all the interested parties have participated and the issues have been fully litigated in this proceeding and we have received briefs which thoroughly explore the issues. We do not believe it would effectuate the policies of the Act, under these circumstances, to refuse to assert jurisdiction and thus subject the parties to further delay and expense in the resolution of this question. We shall therefore not stay our proceedings pending the outcome of the UPGWA's action in the United States District Court but will resolve the issue as to the unit placement of the firefighter classification.

The OCAW is the certified collective-bargaining representative for what is, essentially, a production and maintenance unit.² The UPGWA is the certified collective-bargaining representative for a unit restricted to employees performing plant guard duties within the meaning of Section 9(b) of the Act.³ Prior to November 1969 employees in both bargaining units performed duties which were ultimately assigned to the firefighter classification. Thus employees in the OCAW unit inspected and cleaned emergency vehicles; recharged and made minor repairs on fire extinguishers; tested hose, hydrants, and valves; did preventive maintenance on sprinklers, hose, and hydrants; rewound alarm systems; and replaced sprinkler heads. The performance of these duties involved such employee classifications in the OCAW unit as garage mechanics, pipefitters, drivers,

laborers, and electricians, all on a part-time basis. In fact, of approximately 15 duties to be assigned to the firefighters, the UPGWA concedes that 12 were taken from employees in the OCAW bargaining unit. It is only the "fire prevention work," the driving of the ambulance, and the inspection of fire extinguishers, as to which the UPGWA asserts a claim.

It is admitted that the inspection of the fire extinguishers is a duty which had been formerly performed by the guards in the UPGWA bargaining unit. The guards also operated a vehicle in their regular patrol work which contained litters and first aid equipment and which was used, when so required, to transport sick and injured employees. Shortly after the firefighting unit was established, the Employer purchased an ambulance which was assigned to the firefighters. The guards continued, however, to operate the first vehicle in their guard work. These are two of the three duties which the UPGWA asserts were improperly taken from their unit.

The remaining duty claimed by the UPGWA is characterized as "fire prevention work." The record shows that prior to November 1, 1969, when the fire department went into operation, the Employer's first line of defense in case of fire or rescue work was the volunteer brigades, consisting for the most part of salaried employees who did not belong to either bargaining unit. There were 13 brigades, 11 of which were on the first, or regular shift, and each of which was responsible for a particular geographical area; 1 on the second shift; and 1 brigade consisting of specialists in such fields as explosives, nuclear security, piping, and electronics who responded to fires if their skills were required. Alarms were turned in to Guard Post Number 1 which would notify the entire installation of the fire over a public address system and would also announce which of the brigades was responsible for fighting the fire. The guard at Post Number 1 would then proceed to the site of the fire in a vehicle with a limited amount of firefighting equipment and would assist in fighting the fire or perform other duties, such as directing traffic or controlling crowds, as the situation necessitated. On the third shift, from 11 p.m. to 7 a.m., when no brigade was available, the guard unit had responsibility for firefighting and on one occasion extinguished a blaze. Since the creation of the new firefighter classification, the guards have retained the duty of notifying the facility of the outbreak of a fire.

Because of the growth of the size of its facility and the nature of the product it produces, the Employer, as noted above, decided to institute a full-time firefighting force consisting of eight employees taken from the OCAW unit. These eight men began their training on August 18, 1969, and the central fire department took over all of the duties pertaining to firefighting and rescue work on November 1. The firefighting force was

² "All employees at the Mound Laboratory, operated by Monsanto Chemical Company at Mound Road, Miamisburg, Ohio, excluding office clericals, glass blowers, laboratory aids, instrument operators, health surveyors, electronic technicians, research precision machinists, and guards, professional employees and supervisors as defined in Section 2(11) of the Act"

³ "All plant-protection employees performing plant guard duties within the meaning of Section 9(b)(3) of the Act, excluding all supervisory employees, office and plant clerical employees, professional, semi-professional and salaried employees, and all production, service and maintenance employees"

organized along the professional lines of a municipal fire department and the training given was extensive. Although the brigades were retained, the primary responsibility for fire protection, fire prevention, and rescue work was vested in the new department. In short, the Employer has concentrated in one group of highly trained employees a multitude of duties pertaining to the safety of its personnel and property which had been performed by employees in a number of different classifications on a part-time basis.

We find, on this record, that the duties of the firefighters are essentially an outgrowth of duties formerly performed by employees in the OCAW unit and the volunteer brigades. All of the maintenance work, all of the repair work, and all of the inspection work on fire prevention equipment, except inspection of fire extinguishers, had been done by OCAW bargaining unit employees. The firefighting had been the primary responsibility of the brigades, several of whom had been members of the OCAW unit. The firefighting duties performed by guards, on the other hand, were peripheral duties which have little relationship to the guards' principal duties of providing security for the installation, and were not encompassed by the words "guard duties" in the UPGWA certification. Clearly, as the UPGWA concedes, it cannot represent the classification of firefighters as such because of these employees'

nonguard duties. Under these circumstances we conclude that the classification of firefighters should properly be within the OCAW's bargaining unit and we shall accordingly clarify its certification to include that classification.⁴

ORDER

It is hereby ordered that the certification heretofore issued to the Oil, Chemical and Atomic Workers International Union, Local No. 7-4200, AFL-CIO, be, and it hereby is, clarified by specifically including therein the employees classified as firefighters.

⁴ In agreeing with the result reached herein, Member Jenkins finds it unnecessary to, and does not, rely on the rationale in *McDonnell Company, supra*, in which he dissented. Member Jenkins finds that the instant case is factually distinguishable from *McDonnell*. As for the contention that the arbitration award of the work to the UPGWA is controlling, Member Jenkins notes that the OCAW was not contractually bound to the arbitration procedure and was not required to and did not participate in the proceedings. Thus, he would not give controlling weight to the award. As for the work itself, he notes, as does the Decision, that the duties of the firefighters in issue are essentially work performed by employees represented by the OCAW. The work in question, therefore, did not involve the assignment of new and different work. Accordingly, Member Jenkins would find that the dispute involves a representation matter and agrees from the facts that the work properly is an accretion to the OCAW unit, particularly since the duties are for the most part nonguard duties which could not in any case appropriately be included in the guard unit represented by UPGWA.