

A. O. Smith Corporation, Electric Motor Division and General Drivers, Warehousemen & Helpers Local Union # 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 9-RC-9088

March 20, 1972

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On October 6, 1971, the Regional Director for Region 9 issued a Decision and Direction of Election in the above-entitled proceeding in which he found the Petitioner's requested unit of truckdrivers to be appropriate for severance from an established production and maintenance unit. Thereafter, the Employer filed a timely request for review of the Regional Director's Decision on the grounds that he made findings of fact which are clearly erroneous and departed from established policy. The Employer also filed a motion for stay of election and to reopen the hearing. On November 1, 1971, by telegraphic order the request for review was granted and the election stayed pending decision on review. Thereafter, the Employer filed a supplemental brief and a motion for oral argument.¹

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 considered the entire record in this case with respect to the issues under review, including the Employer's brief, and makes the following findings:

The Employer's motor division has plants in Tipp City, Ohio, and Mt. Sterling, Kentucky, and a warehouse in Piqua, Ohio. The Mt. Sterling plant, the sole plant involved herein, has been in existence since 1964. It employs approximately 550 employees. The Intervenor, International Brotherhood of Electrical Workers, AFL-CIO, Local 2246, since its certification in 1965, has represented a unit of the plant's production and maintenance employees, including truckdrivers. The number of truckdrivers has fluctuated from one to six during this period. The Petitioner seeks to sever a unit of the truckdrivers, comprising three currently employed and three alleged to be in temporary layoff status.

The Regional Director granted the requested severance, finding in support thereof, *inter alia*, that the amount of work done in the plant by the truckdrivers is not significant when compared with their total hours

¹ As the record and the brief, in our opinion, adequately set forth the issues and the positions of the parties, the Employer's request for oral argument is denied. In view of our disposition herein, no ruling is made on the Employer's motion to reopen the hearing.

of work. The Employer contends that the Regional Director erred in his assessment of the evidence bearing on the factors relevant to the severance issue, as set forth in *Kalamazoo Paper Box Corporation*, 136 NLRB 134, and *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387; especially with regard to the above finding as to the amount of inplant work done by the truckdrivers. We find merit in this contention.

The truckdrivers haul finished products from the Mt. Sterling plant to customers located primarily in Sidney, Ohio, and Tecumseh, Michigan, and to the Employer's warehouse located at Piqua, Ohio. They also backhaul raw materials from Sidney, Toledo, and Cincinnati, Ohio. On occasions, Mt. Sterling trucks may make pickups and deliveries for the Tipp City plant.

The foreman of the Mt. Sterling plant's shipping and warehousing department has the responsibility of supervising and assigning work to the truckdrivers and to six shipping clerks and "motor salvage" employees. The manager of materials testified that the Employer preferred to hire truckdrivers from among its inplant employees, and, in fact, 10 of the 16 drivers employed at Mt. Sterling since 1964 had previously been inplant employees.

The Employer's need for truckdrivers has decreased substantially. In the first half of 1971, because of declining production, three of the six truckdrivers then employed were laid off. Although three drivers continued to be employed at the time of the hearing, there was testimony that the Employer had only enough driving work for one and one-third truckdrivers but retained a complement of three drivers to provide for an immediately available replacement whenever one driver was absent. Under the current work schedule, each driver works in the plant for 8 hours every third day. All the drivers admitted to performing some inplant work at all times, except during the unusually busy period between March and May of 1971.² This inplant time is spent loading trucks, operating tow motors, moving skids, helping to take inventory, moving cardboard, and sweeping the dock.

During the history of collective bargaining, the drivers have had their own shop steward who has filed grievances (twice for drivers and once for a material handler). The Tipp City production and maintenance employees, including truckdrivers, have been represented by another local of the IBEW since 1958.

² It may be noted that during this period considerable driving was done in the movement of inventory from the Tipp City and Mt. Sterling plants to the new warehouse at Piqua. Illustrative of the amount of inplant work done by the drivers are weekly totals (during the period January 1970 to March 1971) as high as 24.3, 25.2, 25.9, 47.0, 26.8, 34.4, 30.4, 28.5, 24.0, 23.4, 27.6, 54.6, 34.6, 29.6, 31.0, 42.0, 24.4, 24.0 hours, etc. During the period, however, the average weekly total of inplant work was 7 hours per week and the weekly total, both inplant and driving, was 55-60 hours. In April and May 1971 there was no inplant work. The record contains no statistics for hourly totals after May 1971.

Upon the facts set forth above and our review of the entire record, we find that the requested unit of truck-drivers is inappropriate for severance. In so concluding, we rely especially on the facts that the drivers spend a substantial amount of time performing inplant work and share the same immediate supervision as other employees.³ Accordingly, we shall dismiss the petition.

ORDER

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

³ See *Dura-Containers, Inc.*, 164 NLRB 293.