

**Rostone Corporation and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 25-RC-4654**

April 20, 1972

**DECISION ON REVIEW**

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

On August 18, 1971, the Regional Director for Region 25 issued a Decision and Direction of Election in the above-entitled proceeding in which, *inter alia*, he directed a self-determination election among the petitioned-for hot mold production and maintenance employees of the Employer in Lafayette, Indiana, finding that they constituted an appropriate voting group of residual unrepresented employees and rejecting the contentions of the Employer and Intervenor United Brick and Clay Workers of America, AFL-CIO, that the only appropriate unit for the requested employees must encompass all production and maintenance employees engaged in both hot mold and cold mold operations at the facilities involved.<sup>1</sup> Thereafter, the Employer, in accordance with the National Labor Relations Board Rules and Regulations, 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 depart from officially reported precedent. The Petitioner filed opposition thereto.

By telegraphic order dated September 9, 1971, the National Labor Relations Board granted the Request for Review and stayed the election pending decision on review. All the parties filed briefs 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 authority in this proceeding to a three-member panel.

The Board has considered the entire record with respect to the issues under review, including the briefs on review, and hereby affirms the Regional Director's Decision and Direction of Election.

In footnote 4 of his Decision, the Regional Director stated as follows:

The IBEW seeks a unit essentially limited to the hot mold employees while the Brick and Clay Workers and the Employer contend that only an essentially plantwide unit consisting of employees in both hot and cold mold operations is ap-

propriate. At a simplified level, the difference between the two processes is that in the hot mold process the product is formed and cured in the same operation, while separate curing steps after formation by presses is necessary in cold mold production. While at least some of the Employer's products may be produced by either process, the skills required in each process are sufficiently different to require a six months training period for employees who transfer. The two production processes and the die shop for each are located in separate ends of the same building, are separated by offices, storage, and receiving areas, and are joined essentially by two aisles. Personnel, scheduling higher level supervision, and maintenance services are plantwide while supervision at the lower levels is separate for each operation. Wages, hours, and working conditions are generally the same for both departments. While the record reveals some instances of permanent transfer from cold mold to hot mold, there is no evidence of significant employee or supervisory interchange between departments other than instances of unspecified frequency where employees from hot mold operations may use equipment located only in the cold mold end of the plant.

Clearly the essentially plantwide unit urged by the Employer and Brick and Clay Workers may be found to be an appropriate unit. Equally clearly, the unit sought by the IBEW is comprised of a clearly defined group of employees who constitute the only unrepresented production and maintenance employees in the plant who may also be found to be an appropriate unit for collective bargaining. *Remington Rand Division of Sperry Rand Corp.*, 120 NLRB 1294; *Marion Mfg. Co.*, 101 NLRB 256; *Houston Lighting & Power Co.*, 100 NLRB 76. The cases relied on by the Employer and the Brick and Clay Workers in support of a contrary conclusion are clearly distinguishable. In the instant case the history of collective bargaining reflects that by their bargaining practices the Employer and the Brick and Clay Workers created two units of employees: the cold mold employees and a second or residual unit primarily comprising hot mold employees, whom the Employer and the Brick and Clay Workers by their conduct agreed should not have the same representation as the cold mold employees. In such circumstances, a residual unit is appropriate (see cases cited, *supra*). Since there never existed a recognized unit in which the hot mold employees were included, cases involving severance of units are inapposite. Similarly, the argument that the two separate units of employ-

<sup>1</sup> The Intervenor filed a petition in Case 25-UC-38 seeking to clarify its certified unit of cold mold process employees by adding thereto the hot mold process employees here sought by the Petitioner. The case was consolidated with the instant proceeding for purposes of hearing and decision. The Regional Director denied the clarification request and no request for review was filed with respect to his decision in that regard.

ees the parties themselves have established and lived with over the years creates an impractical dichotomy is not convincing.

Accordingly, since either unit can be appropriate, no unit determination will be made at this time. Rather the employees in the voting group set forth above will be allowed to express their desires to be represented in a separate unit, to be included in the existing unit, or to remain unrepresented.

We are satisfied, upon review of the record, that the unit of cold mold process employees for which the Employer and the Intervenor have bargained subsequent to the relocation of the hot mold process operations in a new wing of the same physical plant continues as a viable unit. For this reason, we find that production and maintenance employees currently unrepresented at the Employer's Lafayette, Indiana, facilities may, if they so desire, constitute an appropriate residual unit.<sup>2</sup>

An election is therefore directed in the following voting group:

All production and maintenance employees in the hot mold department of the Employer's facilities located on U.S. Highway 52 South and Earl Avenue in Lafayette, Indiana, excluding production and maintenance employees represented by the Intervenor, all managerial employees, guards, office clerical employees, and supervisors as defined in the Act.

Accordingly, we shall remand the case to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, except the payroll period for determining eligibility shall be that immediately preceding the date of issuance.<sup>3</sup>

<sup>2</sup> Our dissenting colleague concludes that the original separately located groups of hot mold and cold mold employees have lost their identity by removal to the same plant location despite continued separate function and supervision, and lack of significant interchange. In addition our colleague assigns no importance to the fact that the hot mold group here sought is previously unrepresented, thus residual, and that its lack of representation was no historical accident. The hot mold group is not a fringe group but a distinct processing group in which the Board directed an election in 1965, which the Intervenor lost. Subsequently Intervenor made no effort to represent them along with the cold mold group. In the circumstances the hot mold employees are entitled to vote whether they wish to be represented separately by the representative which now seeks them or by the existing representative of the cold mold employees which now urges an overall unit. The cases cited in the dissent are not pertinent to the problem of residual units of previously unrepresented employees. We would also point out that it has been Board practice to give an unrepresented residual group self-determination unless there is a question concerning representation in the historic bargaining unit to which a fringe group sought by no other union is to be added. See *D. V. Displays Corp.*, 134 NLRB 568, 571.

<sup>3</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 a corrected election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer

CHAIRMAN MILLER, dissenting:

Neither present conditions nor the bargaining history, in my view, support my colleagues' conclusion that the hot mold employees constitute a distinct group of employees with such separate interests that they may be excluded from the production unit sought by the Intervenor.

The Employer is engaged in the manufacture of electrical insulators. At the Lafayette operations here involved it makes a large variety of such products using cold mold and hot mold processes.<sup>4</sup> In 1965, its Lafayette operations comprised a plant located on U.S. Highway 52 Bypass, South, hereinafter referred to as the main plant, where products were manufactured by the cold mold process, and a plant on Earl Avenue which utilized the newer hot mold process. During 1965, upon petitions filed by the Intervenor, consent elections were held in separate units of production and maintenance employees at each of these plants. The Intervenor, although unsuccessful in the Earl Avenue unit, was certified as the representative of the employees in the cold mold process unit and negotiated a 3-year contract with the Employer therefor. In 1966, the Employer transferred virtually all of the Earl Avenue operations to a new addition to the main plant.<sup>5</sup> Although the Intervenor heretofore made no effort to add the hot mold process employees to its existing contract unit, the Employer has extended the benefits of the Intervenor's contracts to all unrepresented Lafayette employees.

Since 1966, hot mold and cold mold production operations have been carried on in the same physical plant within separate departments divided only by aisles. Although each department is separately supervised, all plant production and maintenance operations are under a vice president of manufacture. Production scheduling, payroll, and other administrative functions are performed on a plantwide basis. Notably, all policies and practices with regard to labor grades, wage rates, incentives, merit evaluations,

with the Regional Director for Region 25 within 7 days of the date of this Decision on Review. 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>4</sup> The hot mold process is newer and has gradually replaced the cold mold process as the preferred method in the manufacture of many of the Employer's products. The Employer also has a plant at Spencer, Indiana, where use of the cold mold process has been phased out and at present all manufacture is done by the hot mold process. During the transition from the combination cold and hot mold process to a hot mold process plant, the employees at Spencer have been represented on a plantwide basis. Through a wholly owned subsidiary, the Employer also operates a plant in Ontario Province, Canada, where both processes are used, and employees are represented on a plantwide basis.

<sup>5</sup> Certain spray-up operations ancillary to the hot mold process continue to be performed at the Earl Avenue plant. However, the Employer is attempting to sell the plant and the parties agreed that the small number of unrepresented employees now working there should be treated as part of the hot mold process group for purposes of this case.

fringe benefits, plant rules and regulations, safety, and industrial relations are the same for both production departments. Indeed, even seniority is maintained on a plantwide basis despite transfer from one department to the other.

At the time of the hearing, there were about 85 employees involved in cold mold operations and 140 in hot mold. Since the Intervenor's certification in 1965, the number of employees in hot mold has increased substantially and the number in cold mold has decreased. This shift to the hot mold type of production is expected to continue at Lafayette. Production employees in each department are classified as mixers, press operators, and finishers. Employees in each of these classifications are in the same labor grade in terms of skills, regardless of the department in which they work.

Each production department has a separate die shop, although certain dies are basically identical for both processes, and certain equipment and tools are available only in one of the die shops. Finishing and inspection is generally done by separate groups under separate immediate supervision. However, intermediate supervision is common for both groups perform-

ing these two functions. Employees engaged in other support functions, such as mechanical maintenance (8), plant and facilities maintenance (5), tool crib (2), shipping and receiving (10), and laboratory, serve both production departments.

These facts establish, I conclude, that the relocation and consolidation of the Earl Avenue operations at the main plant in 1966 so merged the interests of the hot mold and cold mold production and maintenance employees that the complements previously agreed to be separate appropriate units lost their identity as such.<sup>6</sup> In these circumstances, and because the bargaining history subsequent to the consolidation establishes that the substantive terms of the Intervenor's contracts have in fact been extended to hot mold employees, I would find that they do not enjoy a community of interest sufficiently distinct from cold mold employees to constitute an appropriate voting group and that only a plantwide unit is appropriate herein.<sup>7</sup>

<sup>6</sup> See *Cutler-Hammer, Inc.*, 161 NLRB 1627; and *Westinghouse Electric Corporation*, 144 NLRB 455, 458. See also *Dexdale Hosiery Mills*, 115 NLRB 228, 230; and *The Mennen Company*, 108 NLRB 355.

<sup>7</sup> See *Minnesota Mining & Manufacturing Company*, 129 NLRB 789; *Owens-Illinois Glass Company*, 112 NLRB 172; and *The Mennen Company*, *supra*.