

**Monongahela Power Company and Utility Workers  
Union of America, AFL-CIO, Local Union No.  
162, Petitioner. Case 6-UC-67**

September 5, 1972

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS  
FANNING AND PENELLO

On April 24, 1972, the Acting Regional Director for Region 6 issued a Decision and Clarification of Bargaining Unit in the above-entitled proceeding in which he clarified the Petitioner's existing unit of employees at the Employer's Rivesville power station in Fairmont, West Virginia, so as to (1) specifically include therein store department employees Charles Kam and David Haught and result technicians Arlando Arcuri, Clem Ball, Donald Brown, Donald Halpenny, and Charles Varner, and (2) specifically exclude therefrom store department employee L. E. Wilt as a supervisor, result technician David Mays as a professional employee, result technician Clifford Boyce as an office clerical employee, and all employees of Tano Brothers, contractor.<sup>1</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's Decision on the ground that in entertaining the clarification petition he departed from precedent and made findings of fact which are clearly erroneous. The Petitioner filed opposition thereto.

The National Labor Relations Board, by telegraphic order dated May 30, 1972, granted the request for review. The Employer filed a brief on review.

Pursuant to the provision 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 parties' briefs and statements of position, and makes the following findings:

For many years—since prior to 1946—the Petitioner has been recognized by the Employer as representative of a unit of employees at its Rivesville power

station. In their most recent contract, executed February 29, 1972, for a 1-year term, effective February 1, 1972, the parties described the unit as "all non-supervisory hourly rated permanent full time . . . employees . . ." By its petition herein, filed March 17, 1972, the Petitioner sought to add to the unit, by way of clarification, two categories of *salaried* nonsupervisory employees, store department employees and result technicians.<sup>2</sup> At the hearing, the Employer filed a motion to dismiss, contending therein that the petition was barred by the existing contract under the Board's holding in *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB No. 160. However, it stipulated to the terms of a clarification in the event that its motion to dismiss were denied.

The Acting Regional Director denied the motion to dismiss and clarified the unit in accordance with the parties' stipulation. The Employer contends that the Acting Regional Director should have granted the motion to dismiss. We agree.

Here, as in *Wallace-Murray*, relied on by the Employer, the unit placement of the individuals involved was made clear in the unit description contained in the current agreement, and their status has not changed since its execution. In these circumstances, to permit one of the contracting parties to effect a change in the definition of the unit by means of a clarification procedure would, as we said in *Wallace-Murray*, be disruptive of an established bargaining relationship.<sup>3</sup> Moreover, there is another fundamental basis for denying the requested clarification. Where, as here, the jobs of the involved individuals have been in existence for a number of years and no recent changes have occurred to warrant finding the individuals to be accretions to an existing unit, the Board has held that a request to add them to the unit raises a question concerning representation and may not be resolved in a unit clarification proceeding.<sup>4</sup>

Accordingly, we shall grant the Employer's motion to dismiss the petition.

**ORDER**

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

<sup>1</sup> The clarification granted by the Acting Regional Director is consistent with the parties' stipulation referred to below.

<sup>2</sup> The Petitioner points to the facts, as background to the instant case, that it filed a petition in Case 6-RC-6078 for an election at the Employer's Fort Martin, West Virginia, power station, that the two cases were heard the same day, and that the Employer agreed to a consent election in Case

6-RC-6078 in a unit which included store department employees and result technicians employed at the sister facility.

<sup>3</sup> See also *Northwest Publications, Inc.*, 197 NLRB No. 32, *Cleveland Pneumatic Tool Company, Inc.*, 135 NLRB 815.

<sup>4</sup> *Lufkin Foundry & Machine Co.*, 174 NLRB 556, and cases cited therein.