

Massey-Ferguson, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner.
Case 7-UC-72

March 5, 1973

**DECISION ON REVIEW AND ORDER
CLARIFYING CERTIFICATION**

BY MEMBERS FANNING, KENNEDY, AND
PENELLO

On September 22, 1972, the Acting Regional Director for Region 7 issued his Decision and Order in the above-entitled proceeding, in which he dismissed the petition seeking to add by way of clarification a group of "engineering employees" known as the Industrial and Construction Machinery Department (hereinafter the ICM Department) to the Petitioner's certified bargaining unit. Thereafter, the Petitioner timely filed a request for review of the Acting Regional Director's decision on the grounds that in denying its clarification request he made erroneous findings of fact and conclusions of law, particularly his conclusion that its failure to insist upon inclusion of the disputed employees in the unit, during the most recent contract negotiations, precludes their addition to the unit by way of clarification. On November 15, 1972, the Board by telegraphic order granted the request for review. Thereafter, the Employer filed a brief 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.

Upon the entire record, including the Employer's brief on review, the Board makes the following findings:

The Petitioner requests the inclusion of the ICM Department employees in its certified unit on the ground that they are accretions thereto.

On June 28, 1968, the Petitioner was certified as representative of a unit described as:

All employees of the Engineering Department, including technical and clerical employees, employed at the Employer's Engineering Department located at 12601 Southfield, Detroit, Michigan 48228; EXCLUDING all engineering trainees for professional, supervisory and managerial positions, field test technical and professional employees, chauffeurs and truck drivers, confidential employees, professional employees,

guards, and supervisors as defined by the Act and all other employees.

Negotiations for a contract were interrupted when the Petitioner filed unfair labor practice charges which led to the issuance of a complaint alleging violations of Section 8(a)(5) and (1) of the Act. The Board subsequently issued a Decision and Order¹ finding the alleged violations, and negotiations resumed when the Board's Order was enforced by the United States Court of Appeals for the Seventh Circuit.²

As found by the Acting Regional Director, in November 1971, before the resumption of negotiations, the Employer transferred its ICM Department, which was part of its engineering department, from Cuyahoga Falls, Ohio, to its 12601 Southfield, Detroit, location.³

When negotiations resumed sometime in November, the Petitioner asked the Employer to include the ICM Department in the certified unit. The Employer took the position that ICM Department employees were not part of the certified unit and that it would not bargain as to them. After several fruitless efforts to obtain the Employer's agreement to include the disputed group, the Petitioner at a meeting in April 1972 informed the Employer it would handle the matter "through legal channels" after negotiations had been completed.

On May 17, 1972, the parties executed a contract. The contract's recognition clause described the unit in terms consistent with those used in the certification and made no specific reference to the ICM Department.

The Acting Regional Director, without passing on the merits of the accretion issue, found that the Petitioner was "extremely vague as to its intentions with regard to the ICM Department employees and took no action to clarify the existing unit until well after the contract had been executed," and concluded that its request to add them without a self-determination election was unwarranted. The Petitioner disputes the finding that it was vague as to its intentions, asserting that the uncontroverted testimony establishes that it did not waive the question of including the ICM Department as an accretion to the unit, and that it specifically informed the Employer of its intention to pursue the matter "through legal channels" after the negotiations because it was reluctant to make it a serious issue holding up the negotiations for a contract which had already been delayed nearly 4 years.

We find, contrary to the Acting Regional Director, that absent an indication that the Petitioner aban-

Southfield location and another location in Detroit. Sometime in 1967 the entire department was transferred to the Employer's Cuyahoga Falls location where it remained until November 1971.

¹ 184 NLRB No. 69

² 78 LRRM 2289, 66 LC 12,060

³ Prior to 1967, the ICM Department was located at both the Employer's

done its request for inclusion of the disputed employees in exchange for some concession in the negotiations which ensued, the Petitioner's postponement of the filing of a clarification petition until shortly after execution of the contract, in the circumstances of this case, did not constitute an acquiescence in their exclusion from the unit.⁴ We therefore consider the merits of the accretion issue raised by the Petitioner.

The record shows that the 44-46 technical employees in the unit (other than the ICM Department) are engaged in design engineering of agricultural and recreation machinery and equipment. Working at drafting tables, they prepare and detail initial designs of new products or parts. Their drafting tables are grouped together according to the Employer's product lines in a single large work area. Although each of the Employer's product groups have separate immediate supervision there is common overall supervision and employees frequently exchange ideas and discuss mutual problems. Upon their transfer to this location, ICM Department employees (10 technical and 2 clerical) were located in the same large work area as another work group. Employees in the ICM Department are engaged in designing modifications of existing agricultural or recreation products in order that they may be used as industrial or construction equipment.

Clerical employees (10-11 in number) in the certified unit perform duties for the ICM Department as well as for other unit employees. Both the ICM Department and other groups send their designs to the same experimental shop and have their designs reviewed in the same checking department. All groups utilize the same mail service, office

supplies, and blueprint department. All share the same overall supervision. All employees work essentially the same hours, share common fringe benefits, and utilize the same parking lot and cafeteria.

Since November 1971, the Employer has transferred unit employees to the ICM Department both on a temporary and permanent basis. The Employer has not established specific job descriptions nor has it set any unique qualifications for the ICM Department. All of the employees who testified at the hearing stated without contradiction that ICM Department work was not different from unit work.

In view of the foregoing, especially the facts that the ICM Department employees perform design engineering functions substantially similar to those of unit employees, there is employee interchange between the various design engineering groups, and the certified unit is described as encompassing all engineering department employees at the Southfield location, we conclude that the ICM Department employees are all accretions to the certified unit.

Accordingly, we shall clarify the certification in Case 7-RC-8917 to include the disputed employees.

ORDER

It is hereby ordered that the certification heretofore issued to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), in Case 7-RC-8917, be, and it hereby is, clarified by specifically including therein employees in the Industrial and Construction Machinery Department employed at the Employer's 12601 Southfield, Detroit, Michigan, location.

⁴ Cf. *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB No 160, *Monongahela Power Company*, 198 NLRB No 177