

American Cyanamid Co., Employer and Oil, Chemical and Atomic Workers International Union, Local 3-499, AFL-CIO, Petitioner. Case 9-UC-86

February 11, 1974

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Keenan. Thereafter, the Acting Regional Director for Region 9 issued an order transferring the case to the Board for decision.

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:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. The Employer is engaged in the business of manufacturing chemicals and allied products in its plant located at Willow Island, West Virginia. At that plant the Employer manufactures approximately 80 chemical products.

The Petitioner is the collective-bargaining representative for a unit consisting of all employees at the Willow Island plant employed on an hourly basis, but excluding, among others, those employees working on jobs which are classified as being in the power department.¹ It has had successive collective-bargaining agreements with the Employer since July 10, 1952.

The Intervenor² has been recognized as the collective-bargaining representative of the power plant employees and has had successive contracts with the Employer covering those employees since 1950.

The Petitioner proposes to clarify the unit it represents by including therein the newly created

classification of effluent operator. It claims the work performed by employees in this classification is simply an extension of the work performed by an employee it represents in connection with treatment of waste (effluent) from the AFI department. Prior to filing of the petition on June 19, 1973, the Employer and the Intervenor consummated a collective-bargaining agreement on May 16, 1973, incorporating therein the classification of effluent operator. They claim the work performed by employees in this classification is an extension of the work performed by employees the Intervenor represents in connection with the treatment of waste from the entire plant.³

The Employer was scheduled to start operation of a new waste treatment facility shortly after the hearing in this case. That facility will treat all of the plant's waste. Effluent operators are to operate this facility.

Previously all of the plant's liquid waste byproducts, with the exception of the waste byproducts of the AFI department (discussed *infra*), were dumped without previous treatment into a settling lagoon near the plant. Then, after some treatment, the liquid waste, was released into Cow Creek, a branch of the Ohio River to be carried out downstream.

Powerhouse employees represented by the Intervenor are responsible for the lagoon. They take samples of the effluent in the lagoon and in the river both above and below the plant. They chlorinate and add lime to the lagoon. They also police the lagoon being concerned about such matters as oil slicks, putting barriers at the rear and about the out fall, making sure that the foam is knocked down and applying antifoam as necessary. Powerhouse attendants spend 10 to 15 percent of their time on these duties. Employer has a powerhouse attendant on duty 7 days a week, 24 hours a day.

The AFI department makes a chemical known as aueromycin, a live stock feed additive. The effluent from this department has in the past undergone separate and distinct purification prior to being dumped into the lagoon. The AFI waste will now be treated with all the other plant waste and the AFI waste facility will no longer be used. The previous special purification of the AFI waste was necessary because of the organic nature of the effluent. The operation of this special system was carried on by an individual in the AFI department represented by the Petitioner, although that individual was not specifi-

¹ The unit description is as follows: All employees of the American Cyanamid Co., Willow Island, West Virginia, who are employed on an hourly basis, but excluding all office and clerical workers, guards, watchmen, professional employees, all supervisors as defined in Sec. 2(11) of the National Labor Relations Act, as amended, and those employees working on jobs which are classified as being in the power department.

² International Union of Operating Engineers, Local 589, AFL-CIO.

³ Employer has moved to dismiss the proceeding contending that it involves a work assignment dispute rather than a representation matter citing *Carey v. Westinghouse Corp.*, 375 U.S. 261. We find that what we are concerned with here is essentially a unit placement issue arising from the enlargement and extension of Employer's waste disposal facilities. *McDonnell Co.*, 173 NLRB 225.

cally classified as an effluent operator. As part of the operation of that system, the operator took care of aerators, set up pumps, operated sludge pumps, and gathered necessary samples. He did not have any duties in connection with the treatment of waste in the lagoon or with the maintaining of the lagoon.

All plant waste, including the AFI waste, will now be treated prior to being dumped into the lagoon. The new system will treat approximately 18 to 20 times the 350,000 gallons treated by the AFI plant. Although its basic purpose is to treat all plant waste in a manner bearing some basic similarities to the way the waste from the AFI was previously treated, the equipment used for such treatment in the new plant is much more sophisticated and its operators require special training. Unlike the AFI plant, which was operated for only one shift 5 days a week, the new plant will operate 24 hours a day, 7 days a week. Employer has had four effluent operators, all formerly powerhouse employees, in training since May 29, to perform the duties of operating the new plant.

In our opinion the work of the effluent operator is essentially an outgrowth of the work performed by other Intervenor-represented employees in connection with the lagoon. Thus, the new system is essentially an outgrowth of the old plantwide waste treatment system. Previously, the vast majority of the plant was treated only in the settling lagoon. Now the Employer, instead of limiting the treatment to the settling lagoon, has decided to treat all plant waste

through the use of the large sophisticated waste treatment facility prior to dumping it into the lagoon. In our opinion, the new facility is more logically viewed as an extension of the previous plant waste treatment facility rather than of the waste treatment facility operated in connection with the AFI department. The AFI facility was a relatively small system designed to take care of the production needs of a particular department. We do not believe the fact that this aspect of that department's work will now be performed as part of a plantwide system indicates that the plantwide system is an extension of the smaller less sophisticated system or that the work done in connection with the plantwide system represents an extension of the work performed in connection with the smaller system.

Since the present plantwide waste disposal facility has been the primary responsibility of the powerhouse employees represented by the Intervenor, and the work performed in connection with the new facility a logical extension of the work performed in connection with that facility, it would be, in our view, inappropriate to grant the Petitioner's request to clarify the unit it represents to include the new classification of effluent operator. Accordingly, we shall dismiss the petition in this case.

ORDER

The petition is hereby dismissed.