

Amcar Division, ACF Industries, Inc. and Local Union 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner and United Steelworkers of America, AFL-CIO-CLC, Petitioner.
Cases 9-RC-10284 and 9-RC-10326

May 13, 1974

DECISION AND DIRECTION OF
ELECTION

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Francis A. Keenan of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Acting Regional Director for Region 9, these consolidated cases were transferred to the Board for decision. Thereafter, the Employer filed a brief.

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.

On the entire record in this consolidated matter, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioner in Case 9-RC-10284, Local Union 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called Teamsters, seeks to represent a unit of all quality control inspectors, classifications A, B, and C, employed by the Employer at its plant in Huntington, West Virginia. The Petitioner in Case 9-RC-10326, United Steelworkers of America, AFL-CIO-CLC, hereinafter called Steelworkers, seeks to represent a unit of all timekeepers and welding technicians, or specialists,

employed by the Employer at its Huntington plant. The Employer contends that the units sought by both Petitioners are inappropriate. The Employer further contends that the inspectors, timekeepers, and welding specialists, along with approximately 15 other unrepresented plant employees, mainly clerks, constitute an accretion to the existing production and maintenance unit represented by the Steelworkers or, in the alternative, should be afforded a self-determination election to ascertain whether they wish to be included in the existing production and maintenance unit or to remain unrepresented. In the event that a residual unit of all of the unrepresented plant employees is found appropriate, both the Steelworkers and the Teamsters are willing to represent the employees in such a unit.

Amcar Division, ACF Industries, Incorporated, is engaged in the manufacture of various types of railroad cars. The Steelworkers is the certified collective-bargaining representative for a unit of approximately 1,200 production and maintenance employees at the Employer's plant in Huntington, West Virginia. The original certification, as well as the current collective-bargaining contract for the Huntington unit, expressly excluded all salaried employees. Because the inspectors, timekeepers, welding specialists, expeditors, schedulers, and various classifications of plant clerks are all salaried, they have never been included in the existing production and maintenance unit and have never been represented for purposes of collective bargaining. It appears that the employees in the above-named classifications are the only unrepresented plant employees at the Huntington facility.

We find no merit in the Employer's contention that the salaried employees in the foregoing job classifications constitute an accretion to the existing production and maintenance unit. While it is not entirely clear from the record whether these classifications existed when Steelworkers was certified for the production and maintenance unit, it is amply clear that the contracting parties intended to exclude all classifications of salaried employees from their successive collective-bargaining agreements, including their current contract. Accordingly, we find that the unrepresented salaried plant employees do not constitute an accretion to the existing production and maintenance unit.¹

There are approximately 29 quality control inspectors at the Huntington plant who comprise the unit sought by the Teamsters. These inspectors' work stations are physically located in various production departments throughout the plant. The inspectors are responsible for discovering defects in materials

¹ *The Horn & Hardart Company*, 173 NLRB 1077.

purchased from outside suppliers, parts fabricated in the plant, and railroad cars at various stages of their assembly. Once an inspector finds a defect in a car or a part manufactured at the plant, he will either have it corrected or note the problem on a ticket, which, in the case of a defective car, travels with it for correction at a later point. The inspectors themselves do not make the corrections. If an inspector discovers that the purchased material is defective, he reports the problem to one of the Employer's buyers. The inspectors are supervised by three inspector supervisors who report to a chief inspector. The chief inspector, in turn, reports to the quality assurance manager, who is responsible to the plant manager. Thus, while inspectors physically work near the unit employees in the production departments, they are separately supervised and do not perform production work. Although the record establishes that there have been permanent transfers of production and maintenance employees into the inspector classifications, it fails to establish the frequency of such transfers. The record does not indicate whether any inspectors have transferred into the production and maintenance unit.

The timekeepers, who, along with the welding specialists, comprise the unit sought by the Steelworkers, are responsible for making appropriate entries on employees' timecards with respect to starting and finishing times for jobs. By doing so, they maintain accurate production records to assure correct payment for bargaining unit employees represented by the Steelworkers. The timekeepers work in offices, but spend anywhere from 2-1/2 to 4 hours each day in the production departments. The timekeepers are separately supervised by a timekeeper supervisor, who reports to the head of the Employer's accounting department. The latter, in turn, reports to the plant manager. Thus, the timekeepers, like the inspectors, spend a significant portion of their working time physically located in the production areas. Also like the inspectors, the timekeepers are separately supervised and do not perform production work.

The four welding specialists, whom Steelworkers also seek to represent, help control welding procedures, assist with technical difficulties concerning welding, and conduct welding tests for job applicants. They spend a substantial portion of their working time in production areas. There is a separate supervisor classification for the welding technicians,² and they do not report to the general foreman of the welding department but, through their own supervisor, to the production manager.

In addition to the inspectors, timekeepers, and

welding technicians, there are other plant employee classifications which, because of their salaried status, have historically been excluded from the bargaining unit. These classifications include the following: scheduler-production, expediter-stores and stock parts, expediter-production, clerk-technical, clerk-material and inventory, and clerk-shipping.

The *scheduler-production* determines when parts manufactured in the plant will be required in the subsequent assembly of cars and prepares a work schedule for production foremen in order to assure that parts will be ready when needed. The scheduler-production is supervised, as are some unit employees, by the foreman of the punch and shear department.

The five *expediters-stores and stock parts* are responsible for seeing that the parts required for the manufacture of the cars are available when needed in the assembly process. Four of these expediters are supervised by the inventory control supervisor, who reports through the production and inventory control supervisor to the production control planning and scheduling manager. The fifth expediter-stores and stock parts employee reports to the shipping department supervisor, who in turn reports through the material control supervisor to the manager of production control planning and scheduling.

The three *expediters-production* are responsible for seeing that parts are manufactured on schedule, and report lags in the production schedule either to the scheduler-production or the production foreman involved. They report to the heads of the blacksmith shop and the punch and shear department, both of which are within the production and maintenance unit.

There is one *clerk-technical* assigned to the quality assurance department and another assigned to the superintendent of freight car erection and construction. The clerk-technical in the quality assurance department is primarily responsible for maintaining information concerning the fabrication of cars and for furnishing this information to customers. The clerk-technical assigned to the superintendent of freight car erection and construction performs clerical work involving records of vacations and absenteeism, requisitions materials and parts needed in production, and delivers messages to foremen and unit employees when necessary. He spends approximately two-thirds of his working time in his office and one-third of his time in the production area.

The *clerk-material and inventory* and the *clerk-shipping* employees perform the various clerical functions required in the inventory control and shipping departments, respectively, and are supervised by the heads of those departments.

² This position was vacant as of the date of the hearing

The record establishes that the above scheduler, expeditors, and clerks spend at least part of their working time in plant offices and that their duties involve keeping records and performing other similar work in connection with plant production. We therefore find that the employees in these classifications are plant clerical employees.³

For the reasons discussed below, we find that the units requested by the Petitioners are inappropriate and that only a residual unit of all of the unrepresented plant employees comprised of the various classifications described and discussed above is appropriate in the circumstances of this consolidated matter.

As for the petitioned for units, the record fails to establish that either the inspectors or the timekeepers and welding technicians share a community of interest separate and apart from that of the other unrepresented plant employees. The record does show that the inspectors are under the separate immediate supervision of the quality assurance manager. However, one of the clerk-technicals, whom the Teamsters does not seek to represent, is also under the quality assurance manager's supervision. With respect to the timekeepers and welding technicians, the record establishes that these two groups are each separately supervised and there is no indication that there is any interchange or even daily contact between them. Furthermore, if these units are found appropriate there will still remain other unrepresented plant employees. Under these circumstances, we find that a unit limited to the inspectors, or to the timekeepers and welders, is inappropriate.⁴

All of the currently unrepresented plant employees are salaried and receive the same holidays. There is no history of collective bargaining for any of them. While the currently unrepresented employees are in almost daily contact with those in the unit, the former are not engaged in direct production work, there is no interchange between the two groups and, with a few exceptions, the unrepresented employees and the unit employees are not subject to the same immediate supervision. Under these circumstances, we find that all of the unrepresented employees together may constitute an appropriate residual unit.⁵

On the other hand, there is a substantial community of interest between the unrepresented employees

and those in the unit. Both groups of employees are paid time and a half for overtime, receive the same shift differential, and enjoy the same holidays. In addition, the unrepresented employees spend a significant portion of their working time in the plant, and their job functions are closely allied with, and integral to, the production work performed by members of the unit. Finally, the job classifications at issue here are among those the Board has traditionally included in production and maintenance units.⁶ Therefore, we find that the employees in the residual unit possess a sufficient community of interest with the employees presently represented by the Steelworkers to warrant their inclusion in the broader unit if they so desire. Accordingly, we shall direct an election in the residual unit.⁷

Based upon the foregoing and the entire record in this case, we find that the following employees constitute an appropriate residual unit:

All quality control inspectors, timekeepers, welding technicians, schedulers-production, expeditors-stores and stock parts, expeditors-production, clerk-technical, clerk-material and inventory, clerk-shop, and clerk-shipping employees, employed by the Employer at its plant in Huntington, West Virginia; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

If a majority of the employees in this unit vote for Petitioner Teamsters, they will be taken to have indicated their desire to constitute a separate unit, and the Regional Director shall certify the Teamsters as the exclusive representative therefor. If a majority of the employees in this unit vote for Petitioner Steelworkers, they will be taken to have indicated their desire to be included in the existing production and maintenance unit currently represented by the Steelworkers and the Regional Director will issue a certification to that effect. If the majority of the employees in the unit cast their ballots for neither of the above-named labor organizations, they will be taken to have indicated their desire to remain unrepresented and the Regional Director will issue a Certification of Results of the Election.

[Direction of Election and *Excelsior* footnote omitted from publication.]

³ *Olin Mathieson Chemical Corporation, Forest Products Division*, 117 NLRB 665

⁴ *Olin Mathieson Chemical Corporation, supra*

⁵ *Rainbo Bread Company*, 116 NLRB 1438, *Olin Mathieson Chemical Corporation, supra*. The record indicates that there is a position entitled clerk-shop which is presently vacant and which the Employer indicated it did not intend to fill. It appears from the record that this is also a plant clerical classification which we shall therefore include in the residual unit.

⁶ See *Olin Mathieson Chemical Corporation, supra*.

⁷ The unit found appropriate contains employees not originally sought by either Petitioner. Therefore, the sufficiency of the showing of interest might not be clear. Accordingly, we direct the Regional Director not to proceed with the election hereinafter directed until he shall first determine that an adequate showing of interest in the unit of employees here found appropriate has been made.