

**The Warner & Swasey Company, Employer-Petitioner
and District 54 of the International Association of
Machinists and Aerospace Workers, AFL-CIO¹**

**The Warner & Swasey Company and Teamsters Union
Local No. 507 of the International Brotherhood of
Teamsters, Chauffeurs, Warehousemen and Helpers
of America,² Petitioner. Cases 8-UC-97 and 8-
RC-9736**

May 20, 1975

DECISION ON REVIEW

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On November 26, 1974, the Regional Director for Region 8 issued his Decision, Direction of Election, and Order in the above-entitled proceeding, wherein he directed an election among all electronic technicians employed at the Employer's electronic products division in Solon, Ohio, and dismissed the petition in Case 8-UC-97. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds that, in concluding that the electronic technicians do not constitute an accretion to the existing bargaining unit, he made findings which are clearly erroneous and departed from officially reported precedent.

By telegraphic order dated January 23, 1975, the National Labor Relations Board denied the Employer's request for review of the Regional Director's dismissal of the petition in Case 8-UC-97, granted review of his unit finding in Case 8-RC-9736 insofar as it excluded all other technicals from the technical unit found appropriate, and stayed the election pending decision 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 in this case with respect to the issues under review and makes the following findings:

As found by the Regional Director, the IAM was certified on December 30, 1968, as the representative of production and maintenance employees at the Employer's Solon, Ohio, electronics products division plant, excluding, *inter alia*, technicians. The unit has at present approximately 93 employees. The Employer in 1972 undertook production of "5330" controls and

created a separate production test department. The Regional Director found that at that time "the electronic technicians who were then employed were placed into a separate testing department and were not combined with the represented production and maintenance unit." The IAM does not now seek to add the electronic technicians to its unit. The Regional Director further found that, in addition to the 22 electronic technicians in the new production test department, the Employer employs "mechanical technicians who report to the manager of engineering and service technicians who report to the marketing manager." After setting forth the duties of the electronic technicians and their relationship to production and maintenance employees, he rejected the Employer's contention that they should be viewed as accretions to the IAM's unit and included by way of clarification, and he found that they constitute an appropriate unit, as urged by the IBT.

We granted review because of the Regional Director's reference in his decision to the existence of other unrepresented technicians and the absence of any finding by him that the requested electronic technicians shared a community of interest separate and distinct from other unrepresented employees classified as mechanical technicians and service technicians. Our review of the record discloses that the parties did not raise this issue, and that there is insufficient evidence to enable us at this time to determine whether or not the requested unit must be broadened to include other unrepresented technicians. In the circumstances, as it appears that there are but a few such employees involved, we believe the issues can best be resolved through the challenge procedure.

Accordingly, we shall remand the case to the Regional Director so that he may conduct the election pursuant to his Decision, Direction of Election, and Order, except that he shall permit any other unrepresented technical employees at the plant involved to vote under challenge, and the payroll period for determining eligibility to vote shall be that immediately preceding the date of this Decision on Review. [*Excelsior* footnote omitted from publication.]

MEMBER KENNEDY, dissenting:

I would remand this case to the Regional Director with instructions to reopen the record and receive additional evidence relevant to the unit placement of the mechanical and service technicians. My colleagues err, I think, in utilizing the Board's challenged ballot procedure for resolving eligibility issues. The fundamental issue confronting the Board in this case is the determination of what constitutes the appropriate unit.

The reason for granting the request for review in this case was to decide whether the appropriate unit should include the unrepresented technicians or should be limited to the electronic technicians as found by the Re-

¹ Herein referred to as the IAM.

² Herein referred to as the IBT.

gional Director. We were justified in granting the request for review, and I believe the critical unit issue should be resolved before proceeding with an election. My colleagues are proceeding with an election before deciding what constitutes the appropriate unit which will govern the resolution of any challenged voter's eligibility. We should not run an election before the appropriate unit has been defined because an employee's eligibility must be capable of being determined by reference thereto. Presumably, if the challenged ballots are sufficient to affect the results of the election, my colleagues will then determine the appropriate unit. This is a cart before the horse approach. If the chal-

lenges are not determinative of the results of the election, and the petitioner should win the election, the parties are left without a Board determination as to what constitutes the appropriate unit for purposes of collective bargaining. Furthermore, no guidance is furnished other unions which might have an interest in representing these employees in a residual unit if they are not included in the unit.

It is my belief that the Board should not avoid its responsibility under Section 9(b) of the Act to find the appropriate unit by having the mechanical and service technicians vote challenged ballots.