

University of Rochester and Physical Plant Skilled Trades Association, Petitioner.

University of Rochester and Local 71-71A, International Union of Operating Engineers, AFL-CIO, Petitioner. Cases 3-RC-6227 and 3-RC-6244

January 22, 1976

DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

On August 8, 1975, the Acting Regional Director for Region 3 issued a Decision and Direction of Election in the above-entitled consolidated proceeding in which he found, *inter alia*, that separate units of the Employer's steam distribution employees¹ and all other physical plant employees could be appropriate depending on the outcome of elections directed by him in two voting groups corresponding to such units.² 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 making his unit determination concerning steam distribution employees he had both misread the record and departed from established precedent. No party³ questions that a unit of all the unrepresented physical plant employees may be appropriate.

On October 1, 1975, the Board by telegraphic order granted the request for review and stayed the elections pending decision on review. The Employer thereafter filed a brief on review and the Operating Engineers filed a statement in support of the Acting Regional Director's 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 considered the entire record in this case with respect to the issues under review, including the Employer's brief and the Operating Engineers statement, and finds, contrary to the Acting Regional Director, that the unit described as limited to steam distribution employees is not appropriate for the following reasons:

¹ This is the unit petitioned for by the Operating Engineers in Case 3-RC-6244.

² The Skilled Trades Association seeks a unit of all physical plant employees, including steam distribution employees.

³ 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, was permitted to intervene at the hearing. It represents a unit of service employees.

There are approximately 100 employees in various classifications in the Employer's physical plant department. At the Employer's River Campus they include: (1) central utility plant employees under the immediate supervision of Charles Steffan, currently represented by the Operating Engineers;⁴ (2) carpenters, painters, and masons under Don MacDonald; (3) electricians under John MacDonald; (4) steamfitters and plumbers under Harvey Smith; (5) steam distribution operators and mechanics supervised by Richard Weigert; and (6) air conditioning and refrigeration employees under Edgar Chamblee. At the Employer's Eastman Campus which is some 2 to 3 miles away, Richard Edinger has under him employees in substantially all the foregoing classifications except those in the central utility plant. The "steam distribution unit" found appropriate by the Acting Regional Director includes those employees under the immediate supervision of Smith, Weigert, Chamblee, and Edinger,⁵ and thus includes not only steam distribution employees but also air conditioning and refrigeration employees, steamfitters, and plumbers.⁶

In finding that the foregoing employees constitute an appropriate unit, the Acting Regional Director relied basically on their separate supervision, on "the fact they are also functionally distinct from other plant employees," and on the conclusion that the Employer referred to them as "its steam distribution employees." The Operating Engineers, in support of the Acting Regional Director's finding, argues that "steam distribution, air conditioning and refrigeration employees" constitute a "homogeneous and separate departmental unit" by reason of "the functional system of air conditioning and steam distribution."

There is, however, no evidence that the employees here in question are referred to by the Employer as its steam distribution employees or that the Employer in any other manner views them or treats them as a separate identifiable group within its physical plant operations. Furthermore, as the Employer argues, the Acting Regional Director was in error in finding that the "steam distribution employees" are subject to separate supervision.⁷

⁴ The Operating Engineers does not in this proceeding seek to have the steam distribution employees added to its established unit of central utility plant employees.

⁵ In the case of Edinger, only those employees under his supervision coming within the classifications supervised by Smith, Weigert, and Chamblee are included in the unit.

⁶ At the hearing, the Operating Engineers stated it did not seek the inclusion of air conditioning and refrigeration employees in its proposed unit, but contends at this stage of the proceeding that they are properly included.

⁷ The Operating Engineers contends not that there is in fact separate immediate supervision of employees in the steam distribution unit, but rather that the Employer's position confuses certain differences in supervision with the basic issue of community of interest in a functional system that the employees sought are charged with maintaining and operating. This argument that there is in substance, if not in form, a proper steam distribution

Smith, Weigert, and Chamblee, who supervise the River Campus employees in the proposed steam distribution unit, are formally classified as supervisors and report to Physical Plant Assistant Superintendent Veeder, who in turn is responsible to Dungan, the superintendent of the entire physical plant. However, Edinger at the Eastman School is *not*, as found by the Acting Regional Director, classified as a supervisor but rather is an assistant superintendent, reporting not to Veeder but directly to Superintendent Dungan. Consequently, the only supervision shared by all the "steam distribution" employees is that on the superintendent level (Dungan's) which is, of course, that shared by all employees in the physical plant operations. Thus, the grouping of the steam distribution employees in a separate unit, as defined by the Operating Engineers, finds no support in the Employer's organizational structure.

Furthermore, we find no basis for the Acting Regional Director's conclusion that the steam distribution employees are "functionally distinct from other plant employees," however that statement is construed. As concluded above, they clearly are not functionally distinct in terms of constituting a recognized separate department or other organizational substructure of the employer's operations. And contrary to the position taken by the Operating Engineers, noted above, their specific work and responsibilities do not somehow bring them together in what might be considered a *de facto* department. To be sure, all the work of all the "steam distribution employees" involves in some way pipes of one kind or another located on the two university campuses; but this element common to all is hardly sufficient to bring together as a necessary departmental unit, which is separate from other physical plant employees, groups of steam distribution employees having work shops at various campus locations,⁸ who, for

departmental unit is considered below.

⁸ The Eastman School "steam distribution employees" work, of course, permanently at a location several miles from where the River Campus "steam distribution employees" work

example, are concerned with operations as different as high pressure steam systems and unpressurized sewer piping. In short, we find no basis for concluding that the "steam distribution employees" are a functionally distinct group,⁹ even assuming, without deciding, that they would constitute an appropriate unit if they were functionally distinct.¹⁰

In view of the foregoing, we find no basis for concluding that the unit sought by the Operating Engineers is appropriate and we shall, therefore, dismiss the petition filed in Case 3-RC-6244. Consequently, we further find that the unit sought by the Skilled Trades Association is, in the circumstances here alone appropriate, and we shall, therefore, direct that an election be held among the following employees of the Employer who, we find, constitute a unit appropriate for purposes of collective bargaining under Section 9(c) of the Act:

All regular full-time and part-time physical plant employees, including steam distribution and air conditioning employees and groundskeepers, employed by the Employer in Monroe County, New York, excluding employees at Strong Memorial Hospital, service employees, central utility employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.¹¹

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

ORDER

It is hereby ordered that the petition filed in Case 3-RC-6244 be, and it hereby is, dismissed.

⁹ The Acting Regional Director cited *California Institute of Technology*, 192 NLRB 582 (1971), in support of his result. But that case is clearly inapposite if for no other reason than that the limited functionally distinct powerhouse unit there found appropriate included only employees who were under separate supervision and all of whom worked in and out of a single location which did not house other employees

¹⁰ Thus, we note in passing that the various trades work side by side in the ongoing renovation and repair of campus facilities under the coordinated direction of different supervisors

¹¹ As the Operating Engineers indicated at the hearing that it desired to participate in any election in which the employees it sought were involved, we shall provide that its name be placed on the ballot.