

**Verona Dyestuff Division, Mobay Chemical Corporation and United Steelworkers of America, AFL-CIO, Petitioner. Case 11-RC-4094**

September 3, 1976

**DECISION ON REVIEW**

BY CHAIRMAN MURPHY AND MEMBERS JENKINS  
AND WALTHER

On November 26, 1975, the Regional Director for Region 11 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of maintenance department employees at the Employer's Bushy Park Plant, Charleston, South Carolina, excluding all other employees.<sup>1</sup> The Employer filed a motion for reconsideration with the Regional Director contending, *inter alia*, that the Regional Director made erroneous factual findings regarding supervision of the maintenance employees and the extent of their interchange and functional integration with production employees. The Regional Director issued an Order on Petition for Reconsideration denying the motion for reconsideration and adhering to his Decision and Direction of Election.<sup>2</sup> Thereafter, the Employer filed a timely request for review of the Regional Director's decision on the grounds that in reaching the above determination he made erroneous findings of fact, departed from precedent, and that, in any event, there are compelling reasons for reconsideration of the policy applied by him.

By telegraphic order dated February 11, 1976, the National Labor Relations Board granted the request for review 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 issue under review and hereby affirms the Regional Director's decision.<sup>3</sup>

<sup>1</sup> Fn 2 relating to this finding is attached hereto as Appendix A

<sup>2</sup> Pertinent portions attached hereto as Appendix B

<sup>3</sup> We adhere to our policy as set forth in *American Cyanamid Company*, 131 NLRB 909 (1961), of finding separate maintenance department units appropriate in the absence of a more comprehensive bargaining history, where the facts of the case demonstrate that the maintenance employees involved have the requisite community of interest. We are satisfied, upon our review of the record herein, that the requested maintenance employees constitute an appropriate unit, despite the facts that some of them are assigned, on a rotating basis, to perform maintenance functions on the production floor and that, while on such scheduled assignments, on the first and third shifts, there is no maintenance foreman present and they are

Accordingly, the case is remanded to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, except that the eligibility payroll period therefor shall be the one immediately preceding the date of issuance of this Decision on Review. [*Excelsior* fn. omitted from publication.]

MEMBER WALTHER, dissenting:

Contrary to my colleagues, I would not find a separate maintenance unit appropriate in this case. The Employer is engaged in the manufacture of dyestuffs for the coloring of textiles, paper, and leather at its Charleston, South Carolina, facility. There is no history of collective bargaining.

The Petitioner requested a unit consisting of approximately 68 maintenance employees. These employees weld, repair machinery, replace valves and flanges, and perform electrical work, pipe work, painting, carpentry, and yard maintenance. There are approximately 5 maintenance employees on the first shift, 50-55 on the daylight or second shift, and approximately 8 on the third shift.

Maintenance employees are assigned throughout the plant on a rotating basis as "production support." These employees perform a variety of routine maintenance and "production support" functions such as tightening pumps and flanges and tacking and replacing gaskets and valves. During the time that they are performing production support functions, they report directly to production supervisors. Indeed, there are no maintenance foremen on duty at all in the plant during the first and third shifts and thus the maintenance employees must work under the supervision of production supervisors. See, e.g., *Timber Products Company Division of Cyprus Mines Corporation*, 164 NLRB 1060, 1062-63 (1967).

There is nothing in the record to indicate that the authority which the production supervisors have to recommend discipline and discharge of maintenance employees working under their jurisdiction is any different from the authority which they exercise over the production employees. In addition, production supervisors temporarily reassign maintenance employees.<sup>4</sup>

under the general supervision of production foremen. The Regional Director has adequately discussed the reasons why the various factors cited by our dissenting colleague do not require a finding that the unit sought is inappropriate. With respect to the assertion in the dissenting opinion that the maintenance employees are supervised by production supervisors, the Regional Director found, and we agree, that this "supervision" is of only a general oversight and coordination nature (final disciplinary action being reserved to maintenance supervisors) and hence the maintenance employees retain their unique character as to supervisory hierarchy apart from production employees. Further, we note that the maintenance employees, when assigned to the production department, perform no production work of any kind.

<sup>4</sup> The cases cited by the Regional Director, and specifically relied on by

*Continued*

During periods of low production or high maintenance, production employees may be assigned as helpers in the maintenance department. They perform preventive maintenance such as oiling machinery or may be assigned to help maintenance employees perform major repairs. These assignments are relatively brief, i.e., approximately 2 days to 1 week in duration, but are clearly temporary interchange among production and maintenance employees.

Employees may transfer between the maintenance and production departments, but actual interchange has been minimal. Production employees with past maintenance experience or who have attended a company-sponsored vocational class have successfully transferred from production to maintenance. Although employees do not normally bump from maintenance to production or vice versa, if maintenance employees have previous production experience, they may bump back in order to avoid a layoff.

While production and maintenance employees have different job classifications, they enjoy the same fringe benefits. The highest paid maintenance employee is paid approximately 16 cents per hour more than the highest paid production employee. There is a maintenance shop located in a separate building which also contains a cafeteria and production shops. There is no evidence of the kinds of duties performed in the maintenance shop nor is there evidence of the amount of time maintenance employees spend working in this area.

*American Cyanamid Company*, 131 NLRB 909 (1961), does not hold that every maintenance department unit must automatically be found to be an appropriate unit for collective-bargaining purposes. Such units are appropriate only where the record establishes that maintenance employees constitute a separately identifiable group performing functions which are separate and distinct from those performed by production employees. In such cases the maintenance employees share a community of interest sufficient to justify separate representation.

I am unable to conclude from the record herein that a separate maintenance unit is appropriate. Approximately 20 percent of the work of maintenance employees is done completely under the supervision of production supervisors. In addition, some day-shift maintenance employees are assigned and report to production areas. As such, their day-to-day functions are under the direction of the production supervisor. Further, there are some transfers between pro-

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my colleagues, in support of the proposition that maintenance employees retain their unique character as to the supervisory hierarchy are inapposite. Those cases involve the appropriateness of single-location bargaining units as determined in part by the degree of control exercised by local managers over day-to-day operations. Such considerations are quite obviously not present and not relevant in the instant case.

duction employees and maintenance employees, and these employees share the same fringe benefits. It is clear that the maintenance employees involved herein do not constitute a distinct and homogeneous group of skilled journeymen craftsmen performing the function of their craft on a nonrepetitive basis. Accordingly, I would dismiss the petition herein. *The F & M Schaeffer Brewing Co.*, 198 NLRB 323 (1972); *U. S. Plywood—Champion Papers, Inc.*, 174 NLRB 292 (1969); *Dundee Cement Company*, 170 NLRB 422 (1968).

## APPENDIX A

<sup>2</sup>The Employer is a corporation organized under the laws of the State of New Jersey with a facility located at Charleston, South Carolina, where it is engaged in the manufacture of dyestuffs for the coloring of textiles, paper, and leather. There are approximately 68 employees in the bargaining unit. The Employer filed a brief which has been carefully considered.

The parties disagree as to the overall composition of the unit. The Employer, in opposition to Petitioner, contends that a separate unit of employees in the maintenance department would be inappropriate. There is currently no collective-bargaining representative for any employees of the Employer.

The cases indicate that a separate maintenance employees' unit is not *per se* inappropriate, and, a determination of its appropriateness may be contingent upon the usual unit determination indicia, including community of interest. *Duke University*, 200 NLRB 81 (1972); *Golden Gateway Center*, 195 NLRB 492 (1972). The record discloses many elements which indicate that a separate maintenance unit would be appropriate in the instant case.

Employees in the maintenance department work under a common supervisory hierarchy which is unique from the production employees. While maintenance employees on the first and third shifts, and those maintenance employees assigned on a daily basis to maintenance work in the production department, do operate under production department supervision, that supervision is primarily of an overseer nature and final disciplinary action, such as discharge, is reserved to maintenance supervision. Therefore, all maintenance employees herein retain their unique character as to supervisory hierarchy from production employees. *Bank of America National Trust and Savings Association*, 196 NLRB 591 (1972); *U-Tote-Em Grocery Co.*, 185 NLRB 52 (1970).

Although there was some testimony of interchange between production and maintenance employees, the

record as a whole demonstrates that such interchange is minimal. Both production and maintenance employees are permitted to transfer from one department into the other. However, in practice, only those production employees who either have past experience in the maintenance department, or who have attended a company sponsored vocational class, may successfully transfer from production to maintenance. Although maintenance employees may, if they desire, transfer to production, uncontested testimony indicated they do not do so. Although production employees are often used as "helpers" to maintenance employees, these employees retain their status in the production department. These "helpers" do not engage in regular maintenance duties but only assist maintenance employees or engage in routine preventative maintenance such as lubrication of machinery. The job classifications in maintenance and production are different, with maintenance employees classified on a "D" through "A" scale while production employees are classified on a "1" through "3" scale. The maintenance employees' wage scale is higher than the wage scale of production employees. Additionally, nonsalaried maintenance employees wear different colored hats than other employees. Although they work throughout the plant, the maintenance department is housed in its own separate building and shop. The record shows that the employees in the maintenance department form a homogeneous, identifiable, and distinct unit within the Employer's organization.

For the above reasons, I find the maintenance employees possess a community of interest peculiar to their department and I find that a unit of maintenance employees is an appropriate unit. *Carson Pirie Scott & Company*, 173 NLRB 308 (1968); *White Front Sacramento, Inc.*, 166 NLRB 44 (1967); *Golden Gateway Center, supra*; *Bagdad Copper Company*, 144 NLRB 1496 (1963).

The parties agree, and the record supports, inclusion of the "instrument technicians and mechanics" in the unit and I so direct.

Contrary to the Employer, Petitioner contends the storeroom clerks and the utility operators should be included in the unit. The evidence indicates the four storeroom clerks and the two maintenance utility operators are classified by the Employer within the maintenance department and are subject to the supervisory hierarchy of the maintenance department. Their wage scale, hat colors, and job classifications are the same as other maintenance employees. The record demonstrates that both the storeroom clerks and utility operators possess a community of interest with the other maintenance department employees. I shall include them in the unit.

The parties agree and the record supports their agreement that the "waste water treatment employees" are not maintenance department employees and should not be included in the unit. I direct their exclusion.

## APPENDIX B

In support of the above contentions, the Employer initially asserts that there is no "common supervisory hierarchy which is unique from production employees." However, the record, reflecting testimony from an employer witness who supervises the maintenance department, clearly reflects that there is a maintenance department hierarchy which includes the plant engineer, area supervisor, and at least eight maintenance foremen. Therefore, this point presents no basis for reconsideration.

The Employer also contends that the Decision and Direction of Election's finding that "although some maintenance employees work under production supervision, final disciplinary action, such as discharge, is reserved to the maintenance supervision," is erroneous. I find no support for this contention. Although the record does reflect, as the Employer asserts in its Motion for Reconsideration, that no "foremen" have discharge authority, the Decision and Direction of Election makes no contrary assertion. The Decision and Direction of Election refers only to "maintenance supervision" handling discharges. Testimony by the plant engineer, an employer witness, supports the above finding:

Q. Now under the supervision of the production supervisor, let me ask you this: Can a production supervisor terminate the maintenance employee?

A. No.

Q. While under this production supervisor's supervision?

A. No, if he had a problem with the man, he would recommend action to the foreman.

The Employer further contends an error exists in the Decision and Direction of Election's finding that production supervision over first-and third-shift maintenance employees is "overseer" in nature. I find no evidentiary support for this contention. As indicated in the paragraph above, the record reflects that production supervision cannot discipline maintenance employees. Furthermore, production supervision does not assign maintenance employees nor may they even temporarily reassign maintenance employees whenever there is a maintenance foreman in the plant, except under emergency conditions. The record demonstrates that the production supervisors

do nothing more than direct maintenance employees' work. The record reflects that there are 5 maintenance employees on the first shift, 50 to 55 maintenance employees on the second shift, and 8 maintenance employees on the third shift. There are no maintenance foremen in the plant on either the first or third shifts. The Decision and Direction of Election reflects the fact that first- and third-shift maintenance employees work under production department supervision (fn. 2, paragraph 4, second sentence).

The Employer, in its Motion for Reconsideration, contests the Decision and Direction of Election's finding that interchange between maintenance employees and production employees is minimal. The Employer also asserts there is no evidentiary support for the Decision and Direction of Election's finding that "only those production employees who either have past experience in the maintenance department or who have attended a Company-sponsored vocational class, may successfully transfer from production to maintenance." Here again I find the facts do not support the motion's contention. Testimony on this point appears a number of places in the record. For example, the following testimony by the Employer's plant engineer reflects evidence regarding transfers either from maintenance into production or from production into maintenance:

Q. Getting back to your job bidding and your layoff, you said that a maintenance man was allowed to bump into production. Was it because of his plant-wide seniority?

A. It was because of his previous seniority with the company starting with the production and moving to the maintenance department.

Q. In other words, he maintained his production seniority in the event of a cutback or a lay-off?

A. Yes.

Q. He had to hold that classification or he could not bump into it, is that right?

A. He would be bumped back to the job from which he came.

Q. Has there ever been a maintenance man who bid on a production job that you know of?

A. No, but there have been maintenance people who bid on the waste treatment plant jobs.

Q. Would it be fair to say that the reason that the maintenance people do not bid into the production is because it is a lower paying job?

MR. BRADLEY: (Employer's Counsel) Objection. It calls for an opinion. He does not know why they don't bid.

HEARING OFFICER: Sustained.

Q. Mr. Pigg (Petitioner's Representative) Let me ask you, what type of seniority system do

you have, is it job, departmental or plant-wide seniority in a layoff or a cutback?

A. In our cutback policy or procedure, we have seniority based upon different rate structures in the plant. There is one for maintenance. There is one for production, one for the Waste Treatment Plant, and one for the utility classification.

Q. In other words, a man that is in production with ten years of service and a man in maintenance with three years of service, the man in production could not bump the man in maintenance for lack of seniority?

A. No.

Q. It is based on qualifications and skills?

A. Yes, it was based on what we decided was a fair and equitable way. I do not know whether you could say that it was based on skills.

Q. Well, you would not take a man from production just on his seniority and let him bump a man that held a skilled job with less seniority, would you?

A. No.

Q. It is based on skills then you would have to say?

A. Now wait a minute. Would you ask the question again. I am not sure that I understood.

Q. You have a man in production with ten years of service?

A. Right.

Q. And a man in maintenance who has three years of service?

A. Right.

Q. And the men with ten years in production could not bump the man in maintenance with three years?

A. Only if he had previously bid from the Maintenance to the Production Department, and still maintained his bumping rights back.

Q. Only if he had?

A. Yes.

Q. Well, if the two jobs are the same, as you have tried to indicate here, why couldn't a man bump over there if there is not a specific difference between the two jobs?

A. Well, I think that it is quite evident that everybody in the plant cannot do everybody else's job.

Regarding the vocational classes, the following testimony by the Employer's plant engineer appears in the record:

Q. In other words, suppose an "A" operator wanted to get into the Maintenance Department to learn a vocational trade or craft, do you have

any kind of training program for this man that he could go to an "E"?"

A. To become an "A"? I am sorry, I did not catch your question.

Q. Suppose you had an operator, a young guy maybe 23 years old or 24?

A. An "A" operator?

Q. An "A" operator? Is that the top operator?

A. Production operator, right.

Q. Whatever you call them.

A. He is an operator-3, I think.

Q. Suppose he was an operator-3, a young man, he did not have a particular skill, and he wanted to get into the maintenance department, do you have any type of training program so that this guy could enroll so that he could get into the maintenance department?

A. Yes, we encourage people to go to the Tech Center, and to take a vocational class, and things like this, and we consider this as a part of their experience.

Thus, the findings of the Decision and Direction of Election in this regard, taken in their total context, are clearly supported by the evidence. The Decision and Direction of Election finds that both production and maintenance employees are permitted to transfer from one department into the other. However, the Decision and Direction of Election goes on to indicate that in practice, only those production employees who either have past experience in the maintenance department, or who have attended a Company-sponsored vocational class, may successfully transfer from production into maintenance. The record, as cited above, supports this finding. The Decision and Direction of Election does not assert, as the Employer appears to contend in its motion, that no job applicants are hired into the maintenance department without prior vocational training or prior experience. The Decision and Direction of Election on this point is merely dealing with the practicalities of interchange between production and maintenance employees. The record reflects that in order for an employee to laterally transfer from production into maintenance he must have prior maintenance experience or vocational training. Logically, as argued by the Employer, a production employee could transfer to maintenance as a beginning employee in the "E" classification. The Decision and Direction of Election does not assert otherwise. In fact, as indicated above, the Decision and Direction of Election clearly indicates that production and maintenance employees are permitted to transfer from one department into another. The record reflects, however, that from a practical standpoint the practice is otherwise. This

assertion is clearly supported by the record as cited above.

The Employer, in its motion, quarrels with the Decision and Direction of Election's findings concerning production employees being used as helpers to maintenance employees. I find no evidentiary support for this contention. The Decision and Direction of Election states: "Although production employees are often used as 'helpers' to maintenance employees, these employees retain their status in the production department." "These helpers do not engage in regular maintenance duties but only assist maintenance employees or engage in routine preventative maintenance such as lubrication of machinery." The Decision and Direction of Election's assertion is supported by the following testimony by the plant engineer:

Q. It is very minor repairs that they are doing, in other words?

A. They are working with others in major repairs. They are helping in major repairs.

Q. All right, they are just working as helpers, or assistants, they do not actually take the work order and perform the work themselves, do they?

A. No.

Q. Who furnishes the tools for the production workers?

A. Production and supervision will furnish some, and in some cases, we furnish some.

Q. What do these tools consist of for a production worker, can you tell me?

A. Hand wrenches, adjustable screw drivers.

Q. Various small hand tools?

A. Well, some of them are rather large, an inch, or an inch and a quarter maybe, depending on the size of the nuts.

Q. These production workers are required to weld?

A. No.

Q. Are they required to fix the pumps?

A. They adjust the packing, or something like this maybe.

Q. Are they required to overhaul a pump?

A. Not to overhaul a pump.

Q. Are they required to wire a motor up?

A. No.

Q. Take a motor off a machine?

A. They may help to do that.

The Motion for Reconsideration questioned the Decision and Direction of Election's assertion that "the maintenance employees' wage scale is higher than the wage scale of production employees." I find no support for this contention. The evidence reflects that a 16-cent differential exists between the top

maintenance classification and the top production classification. Testimony throughout the transcript, and especially pages 13 and 21, reflects different pay scales between maintenance employees and other of the Employer's employees. Also, at Tr. 76, testimony in response to a question regarding the wage scale for store clerks, indicates store clerks are paid on the general maintenance scale and the general maintenance scale is separate from production rates. Thereafter, at Tr. 77, the plant engineer testified in response to questions regarding the ranges of maintenance pay for store clerk employees, and indicated the store clerk employees' wage rates range within the middle ranges of general maintenance grades A through D. The plant engineer was then asked if the general maintenance rates were higher than production rates and his response, which unfortunately was interrupted before conclusion, indicates that the maintenance rates are not necessarily higher than production rates but that the top man in maintenance would get approximately 16 cents more than production men. Therefore, the evidence clearly indicates that the wage scale between production employees and maintenance employees is different. Furthermore, the evidence indicates that the wage scale for maintenance employees is higher in the sense that the highest paid maintenance employees receive more money than the highest paid production employees.

In response to the Employer's contention in its Motion for Reconsideration that the Decision and Direction of Election's finding that "although they work throughout the plant, the maintenance department is housed in its own separate building and shop." The record testimony, especially that at pages 43, 44, and 98, supports the above Decision and Direction findings. Precisely, the testimony indicates that there is a separate maintenance building which houses the stores, which are manned by storeroom clerks under the supervision of maintenance department hierarchy; offices of maintenance foremen; a cafeteria which is available to all employees in the plant both maintenance and production; the maintenance shop; and dressing rooms and showers for maintenance employees. Therefore, this contention by the Employer is not supported by the evidence.

Although the Employer disputes the Decision and Direction of Election's findings as to "utility operators," the Decision and Direction of Election does not indicate, as the Employer asserts, that "utility operators" are the same as store clerks or instrument technicians or maintenance mechanics. Moreover, record testimony indicates that the utility operators are part of the maintenance department, that the utility group is one of the three classifications within the

maintenance department; and that the utility operators, along with all other maintenance employees, excepting only the salaried instrument technicians, wear blue hardhats. However, as mentioned in the Motion for Reconsideration, the Decision and Direction does err in that the utility people have a separate set of rates within the maintenance department. However, this error is not significant in light of the above evidence which supports the Decision and Direction of Election's determination as to "utility operators."

Therefore, I find that the Motion for Reconsideration raises no material issues warranting reconsideration of the factual findings of the Decision and Direction of Election. The Motion for Reconsideration on factual grounds is hereby denied.

The Employer contends that the citations in support of the Decision and Direction of Election "are not apposite to the instant case either on the erroneous factual findings or on the correct facts."

The Motion for Reconsideration raises no legal basis for setting aside the Decision and Direction of Election. The case cited in the Employer's motion, *General Foods Corporation*, 166 NLRB 1032 (1967), is distinguishable from the instant situation. The petitioner in *General Foods* was seeking to sever 36 maintenance employees from an historic production and maintenance unit of 291 employees that had been represented by the Teamsters and its predecessor in interest since 1951. The petition in *General Foods* also wished to join those severed employees in a unit with five boilerhouse employees whom the petitioner had represented under separate basis since 1954. In the alternative, the *General Foods*' petitioner requested a separate unit of the 36 maintenance employees without the 5 boilerhouse employees, or any other unit the Board would find appropriate. Unlike the situation in *General Foods*, the instant case involves a plant where there is no history of collective bargaining. Additionally, in the *General Foods* case, both the employer and the other union, the Teamsters, opposed severance and contended that only the existing production and maintenance unit was appropriate.

In the instant case, the evidence indicates that no other labor organization has petitioned for an overall production and maintenance unit, and, in fact, evidence presented by the Employer indicates that employees other than maintenance employees have little or no interest in representation by a labor organization. Therefore, the facts of the *General Foods* case are clearly distinguishable from the case in hand.

The Motion for Reconsideration raises no basis for reconsidering the Decision and Direction of Election on legal grounds and is, therefore, denied.