

**Virginia Manufacturing Co., Inc. (VAMCO) and
United Mine Workers of America, AFL-CIO,
Petitioner.** Case 11-RC-5781

May 28, 1993

DECISION, DIRECTION, AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held February 28, 1992,¹ and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.² The tally of ballots shows 49 for and 43 against the Petitioner, with 20 challenged ballots, a number sufficient to affect the election results.³

The Board has reviewed the record in light of the exceptions⁴ and briefs and has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision.⁵

1. We agree with the hearing officer's recommendation that the challenge to the ballot of Charles Ridings should be sustained. The hearing officer found that Ridings, who has held the position of production control clerk for about 6 months and reports directly to Daniel Hurd, the plant superintendent, is an office clerical/technical employee without a community of in-

terest with the production employees.⁶ However, in affirming the hearing officer, we do not rely on her conclusion that Ridings is in possession of information that is arguably confidential.⁷ Instead, we rely on the fact that his primary job function is, on a daily basis, to compile production information and keep track of inventory and the raw materials used in the production process,⁸ and, based on those compilations and certain calculations he makes from them, to prepare the "hot list" that is used by management to determine daily production priorities, he also prepares inventory and various departmental and individual employee production reports. (Individual employee reports are not made out for some departments.) He prepares the "hot list" and the various reports in an office in the building housing the sheet metal department. He spends 60 percent of his worktime in that office, which is located in an area off a showroom. The remaining 40 percent of his worktime is spent on the production floor obtaining the information for his reports through monitoring the production efficiencies of unit employees and the work process through its various stages from raw material to finished product, including verifying or doublechecking the production counts of the operators and keeping track of inventory and the various completed production components.⁹

Although his monitoring duties place him in daily contact with unit employees, we find, as did the hearing officer, that these duties are incidental to his primary function of preparing the various daily production and inventory reports which track and guide production, the preparation of which occupy more than the majority of his working time. Consequently, we likewise find that he qualifies as an officer rather than plant clerical employee. This finding is further warranted by the fact that certain of his monitoring duties have the potential of placing him in an adversarial position to the interest of the production employees. Thus, in monitoring the production efficiencies of the unit employees, Ridings questions operators concerning the reasons their production percentages are low; specifically, he testified that he asks them whether their machine had broken down or they were working with

¹All dates are 1992 unless indicated otherwise.

²The unit is:

All full-time and regular part-time production and maintenance employees including leadpersons and quality control employees employed by the Employer at its facility located at 1001 Industrial Drive, Pennington Gap, Virginia; excluding all office clerical employees, professionals, guards and supervisors as defined in the Act.

³On May 15, 1992, the Executive Secretary's Office, in the absence of exceptions, issued an Order adopting the Regional Director's report in which, inter alia, the Regional Director sustained the challenges to the ballots of David Bryson, Chris Parson, Randy Gibson, and Billy Hicks. The Regional Director also determined that the resolution of the challenges to the ballots of Steve Birman, Jimmy Crusenberry, Bob Duncan, and Randy Woodard would be held in abeyance pending the decision of the administrative law judge in Cases 11-CA-14621-2, 11-CA-14621-3, 11-CA-14621-4, and 11-CA-14621-5.

⁴In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to sustain the challenges to the ballots of Timothy Parks, Harry Barney, and Greg Ewing, and to overrule the challenges to the ballots of Ronnie Carroll, Randy Ridings, Burle Edmonds, and Ken Pearce and to open and count their ballots and issue a revised tally of ballots.

⁵In light of our overruling the challenges to the ballots of Bernie Noe and Mark Cawood, as described below, we shall direct that their ballots, as well as those named in fn. 4 supra, be opened and counted, and that in the event the revised tally of ballots indicates that the challenged ballots of the four alleged discriminatees in the related unfair labor practice proceeding are still determinative, that the appropriate certification be held in abeyance pending resolution in that proceeding of those challenged ballots and thereafter, if required, the issuance of yet another revised tally of ballots.

⁶We do not adopt the hearing officer's designation of Ridings as a technical employee however. The evidence is insufficient to support a finding that Ridings is a technical employee.

⁷His testimony indicates that he talks to the operators to verify the counts and jobs they have done. He also testified that an operator usually helps him in the physical counting. He further testified that he will go over "the paperwork" with the operators to make sure that they understand it, i.e., "their standards as what they have to build." Finally, he testified that if he did not keep track of inventory and the operators' work, "they wouldn't have any idea what parts they had made, what . . . stage they [were] in. They couldn't . . . even make . . . schedule production reports."

⁸The Employer produces wood and metal furniture and barracks equipment for the Department of Defense.

⁹Office clericals are excluded from the unit.

bad material. He also testified that when a production standard “looks off,” on his own initiative he would “watch [the operators] and time them and see how long it takes them to build probably five parts and I put that in relation to how many they could do an hour.” He would then give the results of the time study to his supervisor for possible adjustment of the standard. Although he further testified that he knew of no instance when any of his reports led to disciplinary action,¹⁰ we conclude that the production employees might well view his monitoring their work efficiency through time studies and the like as potentially adverse to their employment interests, thereby leading them to consider Ridings to be more aligned with management’s interest than with theirs. Accordingly, we shall sustain the challenge to his ballot.¹¹

2. We agree with the hearing officer that leadmen Joshua Carroll and William Morrison are supervisors within the meaning of the Act and that therefore the challenges to their ballots should be sustained. In so finding, we rely particularly on evidence that Carroll and Morrison have exercised independent judgment in evaluating the performances of employees, including discussing the evaluations with the employees before they were approved by higher management.¹² We also emphasize that Carroll and Morrison have exercised independent judgment in initiating and signing disciplinary warnings against employees that have resulted in disciplinary action being taken by higher management. In many instances, Carroll’s and Morrison’s signatures were the only signatures appearing on the forms for management.¹³

3. The hearing officer sustained the challenge to Bernie Noe’s ballot on the theory that he was a highly skilled technical employee whose personal view of himself as a part of management created a “disparity of interest . . . so strong between [him] and the production employees that his placement in the unit would not provide for the cohesive unit necessary for collective bargaining.” The Employer excepts, contending that Noe is a highly skilled employee whose work is

inextricably intertwined with the production process and that he enjoys a substantial community of interest with the unit employees; therefore, it contends, the challenge to Noe’s ballot should be overruled. We find merit to the Employer’s contentions.

As the hearing officer found, Noe is a tool-and-die maker with 35 years’ experience. Most of his skill came from on-the-job learning, but he has some training in blueprint reading, and he has taken some other technical courses. As a highly skilled worker, he is paid \$11 per hour—more than twice the average unit employee’s salary of \$5 per hour. Nonetheless, he punches the same timeclock as the other unit employees, receives overtime for work in excess of 40 hours, and receives no benefits different from those of the other employees.

Noe spends approximately 90 percent of his worktime in the machine shop and the remaining 10 percent on the production floor; but the machine shop is close to the production area, and he has contact with other unit employees in both locations. He repairs and builds dies that are used in the production process, changes machine springs, and sharpens punches on the production machinery. He interacts with the other employees both when he is doing machinery repairs or testing dies on the production floor and when unit employees bring dies to him for repair or to report trouble with dies. His shop also serves as an area for lunch and coffeekbreaks for unit employees.

Although we agree with the hearing officer’s finding that Noe is a highly skilled and relatively well paid technical employee, we do not agree that this is a sufficient basis to exclude him from the unit. The Board does not automatically exclude technical employees from units of other employees. Rather, it determines the unit placement of such employees based on all the factors relevant to a community-of-interest finding.¹⁴ That test is an objective standard, based on the actual duties and conditions of the job; skill requirements is only one of those factors, and an employee’s purely subjective identification with management is not a relevant factor at all.

Here Noe’s regular contact with other unit employees, his receipt of identical benefits, and the degree to which his job is functionally integrated into the basic production processes are sufficient to establish a community of interest between him and the other unit employees. The hearing officer erred by giving insufficient weight to these facts about Noe’s actual job and by relying on Noe’s unsupported claim to another employee that he was “in management.”

For the foregoing reasons, we find that Noe should be included in the production and maintenance unit, and we direct that his ballot be opened and counted.

¹⁰Ridings’ response in this regard was in answer to the hearing officer’s questioning whether *supervisors* were disciplined for low production in their departments. He indicated he would likely know about any such disciplinary action because management would ask him to doublecheck the production figures before acting. Although he was not asked whether employees had been disciplined for low production based on his reports, it is likely that management would follow the same procedure as to employees that it would for the supervisors.

¹¹This finding is not undermined by Ridings’ testimony that on an average of 10 times a month he would help operators get caught up in production. (Ridings initially was employed as a break press operator in the sheetmetal department.) He testified that he aided these operators of his own volition. Thus, these efforts were not part of his official duties.

¹²*El-Tech Research Corp.*, 300 NLRB 522 (1990).

¹³See *Sun Refining Co.*, 301 NLRB 642 fn. 2 (1991).

¹⁴See, e.g., *Hogan Mfg.*, 305 NLRB 806, 807 fn. 7 (1991); *Livingston College*, 290 NLRB 304, 306 (1988).

4. The hearing officer found that Mark Cawood was an office clerical/technical employee who lacked a community of interest with the production employees. He therefore recommended sustaining the challenge to Cawood's ballot. The Employer excepts, contending (1) that Cawood is employed in the quality control department, and "quality control employees" are specifically included in the stipulated bargaining unit, and (2) that Cawood shares a significant community of interest with the unit employees. We agree.

The hearing officer found, and the record shows, that Cawood has been employed for 2 years in the quality control department, where he, along with other quality control employees, is supervised by John Stevian. Cawood works a regular part-time schedule 3 days a week, amounting to about 24 hours a week. He is paid \$4.50 an hour, has the same breaks as the other production employees and, like them, does not receive any paid vacation or insurance benefits.

Although he is in the quality control department, Cawood spends about 60 percent of his time doing drafting work. Of the remaining 40 percent, half is spent on quality control inspection work and half in assisting Charles Ridings in the production control office. The quality control office and the production control office are located next to each other, and the former is located about 15 feet away from the production floor. Cawood does his drafting in the quality control office.

In 1991 Cawood completed a 2-year drafting program at the Mountain Empire Community College, and was enrolled in a preengineering program at the time of the hearing. His drafting work involves making drawings of parts on the basis of samples shown him or information given him by the sheetmetal supervisors. The drawings are used by production supervisors and operators to make sure their machines are set up correctly. Cawood discusses the drawings with production workers who have questions about them. Such discussions occur about 4 or 5 times a week, with the conversations lasting about 5 minutes or less. Cawood's quality control duties involve testing new materials at the beginning of the production process, testing individual parts during the production process, before they are put into the final product, and then testing the final product. He checks for such characteristics as the weight that shelves will bear (load testing), the thickness of paint, and the dimensions of products and their parts. In performing these duties, Cawood is doing exactly the same work as that done by employees who work full time in quality control. He fills in for the other employees as needed. Most of the quality control work is done on the shop floor.

Cawood's production control work consists mainly of assisting Charles Ridings in calculating the operators' daily production rates on the basis of both piece-

work sheets filled out by the operators and actual counts of pieces performed by Cawood or Ridings on the production floor. In the course of his production control duties, Cawood goes onto the production floor at least once a day.

The hearing officer acknowledged that Cawood's fellow quality control employees are included in the stipulated unit, but he determined that Cawood should be excluded because for 80 percent of his time he worked as a draftsman and production control employee and during that time his "contact with production employees [was] only incidental to the performance of his job." Because, for the reasons that follow, we find Cawood's nexus with other unit employees more than incidental even in his work as a draftsman and production control employee, we overrule the challenge to his ballot.

It is clear from the testimony of Cawood, whom the hearing officer generally credited, that he had contact with production employees at least once a day in connection with his production control duties and more than once a day, on average, in connection with his drafting duties. This is in addition to the 20 percent of his time spent in quality control work which took place mainly on the production floor. Furthermore, both the production control duties and the drafting duties were integral to the production process. Employees conferred with Cawood about the drawings to make certain they understood how they were to set up the machines, and his work as a production control employee involved verifying counts of parts so as to keep the production process on track. In all of his duties, Cawood worked either on or near the production floor and was subject to the overall supervision of the quality control manager, who supervised full-time quality control employees indisputably in the unit.

Therefore, we find that Cawood should be included in the unit, and we overrule the challenge to his ballot. Accordingly, we direct that Cawood's ballot be opened and counted.

As would we, our dissenting colleague would include in the unit quality control employee Cawood. Contrary to our finding, he would also include production control clerk Ridings, who does time studies, among other things. He suggests a similarity between the two jobs. However, he overlooks the important fact that quality control employees are expressly included in the unit description; time study employees are not. We are reluctant to disturb that important distinction which the parties themselves have drawn.¹⁵

¹⁵ Contrary to the suggestion of our dissenting colleague, we do not regard the stipulation as *dispositive* of the inquiry. Rather, we regard the express inclusion of one group and the noninclusion of the other as evidence of how the parties themselves viewed the two groups. In our view, this mutually shared view, when coupled with good reasons to support it, is a *factor* to be considered in deciding the issue before us.

Further, there is a good reason for this distinction. Quality control work, like that performed by Cawood, generally involves the inspection of products and not a confrontation of employees. There are only random effects on employees' wages and terms and conditions of employment. By contrast, time studies, like those accomplished by Ridings, regularly involve the time-study employee's direct confrontation of other employees concerning the pace of their work and the quantity of the product they are required to produce.¹⁶ Thus, the time-study employee's role in developing or checking production standards of unit employees as a whole has a direct effect on unit employees' wages, hours, and terms and conditions of employment. The time-study employee also exercises discretion to determine whether there is a productivity problem and, if so, whether it is attributable to the production employee. In performing these tasks, the time-study employee must ascertain when a production standard "looks off," identify which individuals should be timed, and determine whether variable factors, such as machine breakage and materials defects, short runs, and downtime, have affected the quantity of product expected and to what degree.

Our dissenting colleague suggests that the "conversations" between Ridings and the production employees were not "confrontations." We do not think it useful to continue that semantic debate. Suffice it to say that when Ridings questions an employee about his/her low production, Ridings and the employee have markedly different interests.¹⁷

DIRECTION

IT IS DIRECTED that the Regional Director shall, within 10 days from the date of this Decision and Direction, open and count the ballots cast by Bernie Noe, Mark Cawood, Ronnie Carroll, Randy Ridings, Burle Edmonds, and Ken Pearce and prepare and cause to be served on the parties a revised tally of ballots. In the event the Petitioner receives a majority of votes cast and the remaining challenged ballots are not determinative, a certification of representative shall issue.

IT IS FURTHER DIRECTED that should the revised tally of ballots indicate that the remaining challenged ballots are determinative, any certification shall be held in abeyance pending the resolution of the challenges to the ballots of Steven Birman, Jimmy Crusenberry, Bob Duncan, and Randy Woodward with the final outcome of the outstanding unfair labor practice in Case 11-CA-14621.

¹⁶In this respect, Ridings' work differs from that of the material planners in *Container Research Corp.*, 188 NLRB 586 (1971).

¹⁷Our colleague's analogy to quality control employees is not a valid one. As he notes, quality control employees can reject faulty parts and stop production lines. However, in the cases cited by our colleague, they do not question *employees* about the low quality of their work.

ORDER

It is ordered that this matter be remanded to the Regional Director for Region 11 for further processing consistent with this decision.

CHAIRMAN STEPHENS, dissenting in part.

I would not sustain the challenge to the ballot of Charles Ridings, the production control clerk.

First, contrary to my colleagues, I would not infer that because the stipulation expressly included the quality control employees and was silent regarding the time study employees, Ridings should be excluded.¹ Rather, it is well established that when a stipulation does not specifically exclude or include an employee classification and leaves unclear the parties' intentions with respect to an individual, the employee's placement is decided on the basis of community-of-interest principles.² Therefore, I would include Ridings in the unit on the basis of his community of interest with the production employees. His duties resemble those of employees whom the Board has found properly included in production and maintenance units as plant clericals.

As the Employer correctly points out in its exceptions, in his responsibility for maintaining production control records, Ridings resembles the materials planners in *Container Research Corp.*, 188 NLRB 586 (1971). The Board deemed them plant clericals because of their regular contact with production employees in the production process and their receipt of benefits equivalent to those of the production employees. Ridings has similar contact with production employees. In fact, he spends the majority of his worktime performing production control activities that bring him in constant daily contact with the production employees. Further, Ridings is a low-level employee who is paid only \$4.50 per hour, which is comparable to the production employees, and like the production employees, he receives no paid vacation or insurance benefits. His work is highly integral to the production process because, as he testified, if he were not keeping continual track of the employees' work, they "wouldn't have any idea of what parts they had made" or "what stage they [were] in." Functional integration with the production process is a classic indicium of a plant clerical who possesses a community of interest with production and maintenance employees.³

¹The characterization of Ridings as a "time study employee" is somewhat misleading. His primary job function is to compile production information and keep track of inventory and the raw materials used in the production process. It appears that only a small percentage of his time is spent timing the operators.

²See, e.g., *Giummarra Electric*, 291 NLRB 37, 38 (1988).

³See, e.g., *Columbia Textile Services*, 293 NLRB 1034, 1037-1038 (1989); *ITT Lighting Fixture*, 249 NLRB 441, 441 (1980) (employee Cox).

I do not share my colleagues' view that this clear evidence favoring a finding of community of interest is overcome by Ridings' authority to monitor the employees' production rates. In my view, the studies Ridings makes of employee production no more place him in an adversarial position to unit employees than do the duties of quality control employees; and the Board has long held that even when quality control employees have the authority to reject faulty parts or stop production lines because of defects, that authority is not a ground for finding that they lack a community of interest with the employees whose work they are evaluating.⁴ Furthermore, my colleagues have described the role of a time study employee in the abstract and have not fully considered the record evidence of how Ridings performs his job. In this regard, the record reveals that Ridings has "conversations," not "confrontations," with the production employees when he talks with them to determine what, if anything, has happened that may have affected production

⁴ *Modine Mfg.*, 180 NLRB 472, 473 (1969). Accord: *Blue Grass Industries*, 287 NLRB 275, 299 (1987).

volume. For example, Ridings testified, he "goes over the paperwork with the operators, making sure they understand the paperwork, their standards as far as what they have to build" and "would not necessarily question [an operator] as to why it [production] was low as he would find out what they'd done and ask if the machine had broke[n] down or if they was working with bad material." Moreover, the production operators also help Ridings to do the physical inventory counts. All of this connotes a working environment of communication and cooperation, rather than an adversarial one, between Ridings and the production employees. Finally, there is no evidence in the record that the reports that Ridings produces have any effect on the production employees' wages, hours, and terms and conditions of employment.⁵

⁵ See *Case Corp.*, 304 NLRB 939 (1991), in which the Board included industrial engineers in a production and maintenance unit even though they made technical production and performance standard determinations including whether overtime and downtime would be reduced, and assisted in staffing assessments by advising management on production operations as to whether a particular manpower hiring request should be filled.