

**Bethlehem Steel Corporation, Employer-Petitioner,  
and United Steelworkers of America, AFL-CIO,  
CLC.** Case 5-UC-341

September 27, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX,  
LIEBMAN, HURTGEN, AND BRAME

On December 26, 1996, the Acting Regional Director for Region 5 issued a Decision and Order dismissing the instant petition seeking the exclusion of senior credit representatives from the existing unit, finding that the petition was untimely under *Wallace-Murray Corp.*, 192 NLRB 1090 (1971).<sup>1</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's Decision. The Union filed an opposition brief.

The Employer's request for review of the Acting Regional Director's Decision and Order is granted. Having carefully considered the matter, we have decided to reverse the Acting Regional Director's finding that the petition was untimely, to reinstate the petition, and to remand the case to the Regional Director for a determination on the merits.

The Union and Employer have been parties to successive collective-bargaining agreements covering a unit of office and technical employees at the Employer's Sparrows Point, Maryland facility.<sup>2</sup> Following negotiations conducted during June and July 1993, the parties entered into a contract that was effective from August 1, 1993, to August 1, 1999. In October 1995, three senior credit department employees transferred to the Sparrows Point facility from the Employer's Bethlehem, Pennsylvania location. Pursuant to a contractual reopener provision, in March 1996, the Union proposed discussion of the office and technical unit placement issues. The collective-bargaining agreement limits the contract reopener provision to economic issues, and the Employer declined to

discuss unit placement issues at that time.<sup>3</sup> In March 1996, the Union filed a grievance contending that the disputed senior credit representatives should be included within the bargaining unit. Consistent with the contractual grievance procedure, the parties met, exchanged information, and discussed the issues approximately four times. However, they were unable to reach agreement on the unit placement of the disputed employees.

On May 13, 1996, the Employer filed the instant petition seeking to clarify the unit specifically to exclude the senior credit representatives. The Acting Regional Director found that the existing contract clearly defined the scope of the unit and that the senior credit representatives were not included. The Acting Regional Director, citing *Wallace-Murray*, therefore dismissed the petition as untimely, because it was filed during the contract term and none of the factors requiring an exception to the *Wallace-Murray* rule were present.

Contrary to the Acting Regional Director, we find that this petition was timely filed and therefore should not have been dismissed. As the Acting Regional Director correctly noted, the Board will not normally entertain a petition for unit clarification during the term of a contract to modify the composition of a unit that is clearly defined in the collective-bargaining agreement. *Safeway Stores, Inc.*, 216 NLRB 819 (1975). However, unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established classification. *Union Electric Co.*, 217 NLRB 666, 667 (1975). The senior credit representatives are a newly established classification that relocated to the Sparrows Point facility more than 2 years after the execution of the current collective-bargaining agreement in 1993. The parties never engaged in bargaining about the unit placement of this classification, as the March 1996 reopener negotiations were limited in scope by the terms of the collective-bargaining agreement to economic issues, and the Employer refused to discuss the unit placement of the new classification. After the Union filed its grievance in March 1996 contending that the disputed employees should be included in the unit, the Employer filed the instant petition. Thus, the Employer's petition seeks to clarify the unit placement of a "new" classification that did not exist at this facility before the execution of the most recent contract in 1993. Contrary to the Acting Regional Director, we find that the exempt status of the senior credit representatives is not determinative, albeit the unit description covers only

<sup>1</sup> *Wallace-Murray* involved a petition to clarify an existing unit to exclude guards during the term of the bargaining agreement. Noting that the bargaining unit was "clearly define[d]" in the agreement to include the guards, the Board held that such clarification would "be disruptive of a bargaining relationship" and dismissed the petition as untimely but without prejudice to filing a clarification petition at an appropriate time.

<sup>2</sup> The unit description reads:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the Employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

<sup>3</sup> According to Union Representative Joe Bartel, the Employer initially agreed to broaden the scope of reopener negotiations to include other specified noneconomic issues, but then decided not to honor this agreement and to limit the negotiations to economic issues, consistent with the scope of the reopener clause. The Union does not dispute that the collective-bargaining agreement limits the reopener provision to economic issues.

nonexempt employees.<sup>4</sup> Under these circumstances, we find that processing the petition is appropriate and would not be disruptive of the parties' collective-bargaining relationship. See *Safeway Stores, Inc.*, supra.

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<sup>4</sup> Cf. *Monongahela Power Co.*, 198 NLRB 1183 (1972) (unit clarification petition found untimely under *Wallace-Murray* where union-petitioner sought to add certain salaried classifications that had been in existence at the employer's facility for a number of years and had been historically excluded from a unit described as covering only hourly employees).

Although Member Brame agrees with his colleagues that the exempt status of the senior credit representatives is not dispositive in this case, he stresses that this remains a relevant factor in determining whether these employees belong in the historical bargaining unit.

Accordingly, we reverse Acting Regional Director's decision dismissing the petition as untimely, reinstate the petition, and remand the case to the Regional Director for a determination on the merits.