

E. I. Du Pont de Nemours, Inc. and Paper, Allied/Industrial Chemical Energy Local 1-6992, Petitioner. Case 3-UC-499

April 20, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On April 22, 2003, the Acting Regional Director for Region 3 issued a Decision and Clarification of Bargaining Unit in the above-entitled proceeding in which he found that the newly created position of “PSM¹ quality assurance/quality control receiving examiner” (PSM examiner) is a proper accretion to the existing bargaining unit of production and maintenance employees employed by the Employer at its Tonawanda, New York facility.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review, maintaining that the PSM examiner is not a proper accretion to the existing bargaining unit.

By Order dated November 5, 2003, the Board granted the Employer’s request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, we conclude, contrary to the Acting Regional Director, that the bargaining unit should be clarified to exclude the PSM examiner.

Facts

The Employer manufactures two products: Corian, an acrylic-based solid surface product which provides a protective coat on countertops and sink bowls; and Tedlar, a poly-vinyl fluoride film used as a weather-resistant protective coating on airplanes. The Union, the Paper Allied/Industrial Chemical Energy Local 1-6992, represents a unit of employees at the Employer’s Tonawanda, New York facility. The unit currently includes all production and maintenance employees at the Employer’s plant, including plant clericals and analysts.² The Union represents approximately 335 employees in the unit.

¹ PSM is the Employer’s acronym for “process safety management.”

² The Union’s predecessor, Buffalo Yerkes Union, and the Employer were parties to successive collective-bargaining agreements since Buffalo Yerkes Union’s certification by the Board in 1953, as established in Case 3-RC-1212. The Employer terminated its most recent collective-bargaining agreement with Buffalo Yerkes Union in 1993, and there has been no successor collective-bargaining agreement in effect to date. Nevertheless, certain terms and conditions of the terminated collective-bargaining agreement remain in effect, including the bargaining unit description contained in the terminated agreement.

In 2001, the Employer’s Mechanical Integrity Team, which implements various programs to ensure that the Employer is in compliance with Federal and State safety regulations and that its equipment is safe to operate, decided that all PSM parts and equipment that are manufactured by outside vendors and used in the production process ought to be inspected prior to installation and use. All PSM parts and equipment must meet the required specifications so as to be able to be used safely in the equipment and processes necessary to manufacture Corian and Tedlar. To fulfill that inspection function, in December 2001, the Employer created the new PSM examiner position. The position requires a 2-year Associate’s degree in engineering technology from an accredited 2-year college or the equivalent documented experience/qualifications. The functional responsibilities of the PSM examiner are: identifying and isolating all incoming PSM equipment, components, and items; inspecting all incoming PSM equipment, components, and items for compliance with specifications, codes, or standards; applying the proper required inspection methods on each item; maintaining databases and systems for audit tracking; assisting in vendor audits and vendor qualifications process; providing a monthly examination status report; and assisting the requisitioner to resolve discrepancies prior to items being released for use.

In January 2002, the Employer hired Wally Osetkowski to fill the new position.³ Osetkowski has a 2-year Associate’s degree in the field of engineering technology. Osetkowski’s supervisor is Gordon Gaesser, who is the mechanical integrity reliability engineer at the plant. Gaesser is a nonunit employee and does not supervise any other employee. Both Osetkowski and Gaesser are members of the Mechanical Integrity Team, which consists of 11 active members, mostly engineers and technicians, none of whom are unit employees, and 3 as-needed members, who also are not unit employees. The Team meets at least twice a month, and subgroups meet weekly. All members of the team have at least a 2-year Associate’s degree and many are required to have a 4-year degree.

As the PSM examiner, Osetkowski is not involved in the process of manufacturing Corian and Tedlar, nor does he inspect or test those products. Rather, he visually inspects and physically tests parts and equipment to make sure they meet the necessary physical and chemical specifications required for safe performance. He spends about 60–70 percent of his time visually inspecting critical parts and equipment, such as pipefittings, pipe

³ Although the petition was not filed until September 2002, the parties stipulated at the hearing that the Union contested the nonunit status of the position since its creation.

flanges, standard valves, and pressure vessels, by comparing them with Piping and Instrument Diagrams (PNID), or comparing their physical characteristics, such as materials and pressure, with specification books located in Gaesser's office. Osetkowski spends about 30–40 percent of his time physically testing incoming parts and equipment by using durometers, calipers, micrometers, a Rockwell hardness instrument, a depth gauge, a welding gauge, and continuity meters. Osetkowski testified that in performing his tasks, he most frequently consults with nonunit reliability engineers because they are the most knowledgeable about the manufacturing processes in which the parts and equipment will be used. He also designed and developed an inspection form that provides information on each part inspected.

After completing inspection or testing, Osetkowski determines if the items conform to specifications and will stamp them accordingly. If an item conforms, Osetkowski contacts a clerk in the Employer's store, who is a unit employee, to pick up the item. If an item is nonconforming, Osetkowski will isolate the part and send an e-mail to the members of the Mechanical Integrity Team alerting them to the nonconformance. In trying to resolve nonconformances, he conducts a further investigation. He is often assisted by the reliability engineers who advise him whether the part can be corrected, modified, or nonetheless be used. The PSM examiner also has the authority to reject parts outright and have them sent back to the vendor if the part is not what the Employer ordered. Osetkowski generates a report about once a month detailing the number of items he has inspected or tested and the number of nonconforming parts. He shares this report with members of the Mechanical Integrity Team. He also prepares a report on vendor performance that he gives to the plant manager and to Gaesser. These activities take about 5–10 percent of his time.

Osetkowski works in two areas of the plant: the receiving area and the procurement area. Most of his time is spent in the receiving area, where receiving clerks deliver the parts and equipment to him that he inspects or tests. He, as well as the receiving clerks, may also look up and verify a purchase order in the 3-MCS computer system. He works about 500 feet from the production area, where both nonunit and unit employees work, and close to the maintenance area, where primarily unit employees work. In the procurement area, Osetkowski prepares the reports relating to the number of items inspected or tested and the number of nonconforming items. There, he works in a cubicle next to mechanical technicians, who are not in the unit, and purchasing associates, who are.

Analysis

It is well established that a unit clarification petition is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly created classification. *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Bethlehem Steel Corp.*, 329 NLRB 241 (1999). Here the Union seeks to accrete the PSM examiner into the already-represented unit. “[U]nder current Board law, accretion is found only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted.”⁴

In determining, under this standard, whether an employee in a newly created position shares a sufficient community of interest with employees of an existing bargaining unit several factors are considered. Among them are: interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Cases in which every factor favors accretion are rare, and “the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.” *Great A & P Tea Co.*, 144 NLRB 1011, 1021 (1963).⁵ “Employee interchange and common day-to-day supervision are the two most important factors.” *Archer Daniels Midland Co.*, supra at 675. See also *Towne Ford Sales*, 270 NLRB 311, 311–312 (1984), enfd. 759 F.2d 1477 (9th Cir. 1985).

In the instant case, the Union maintains that the PSM examiner should be accreted into the unit because that position shares a strong community of interest with unit employees. The Employer, on the other hand, contends that the PSM examiner should not be accreted into the unit because it is in essence a technical position not involved with production or maintenance and therefore does not share a community of interest with unit employees. Rather, the Employer argues, the position is more closely aligned with the engineering functions of designing and maintaining the plant processes. We agree with the Employer that this position should not be accreted into the unit.

⁴ *Ready Mix USA, Inc.*, 340 NLRB No. 107, slip op. at 9 (2003), citing *Safeway Stores*, 256 NLRB 918 (1981).

⁵ In *Great A & P Tea Co.*, it was concluded that the factors “militating toward a finding [of] . . . a separate appropriate unit, [were] overwhelmingly counterbalanced by the factors supporting” a finding of accretion.

It is undisputed that Osetkowski is supervised on a day-to-day basis by Gaesser, who does not supervise any unit members. This fact clearly favors finding that accretion is not appropriate.⁶ Further, while Osetkowski receives the items he inspects from unit receiving clerks, gives all items that conform to specification to the unit stores clerk, and works near unit employees, this interaction is outweighed by his more substantive contacts with nonunit employees, such as the reliability engineers and members of the mechanical integrity team. Osetkowski frequently consults with the reliability engineers during the inspection process and when trying to resolve issues surrounding nonconforming parts. These engineers are familiar with the manufacturing process and are therefore able to be of assistance to Osetkowski. He meets with the members of the Mechanical Integrity Team on a regular basis, and they review his e-mails and reports regarding nonconforming parts. Further, the nature of the PSM examiner's responsibilities requires that Osetkowski work alone for most of his workday. In contrast to most unit employees, he does not play a part in the actual production process.

The skills and functions of the PSM examiner are most similar to the nonunit mechanical technicians. Mechanical technicians design, implement, and install new equipment and improvements to existing equipment to improve production processes. In so doing, they interact with reliability engineers, use codes and specifications to visually inspect piping, storage tanks, and pressure vessels, and test such equipment with ultrasound meters, testers, calipers, micrometers and durometers.⁷ In fact, a mechanical technician assumes Osetkowski's duties during his vacations.⁸ In addition, like the mechanical technician

position, the PSM examiner position requires a 2-year Associate's degree or the equivalent. In contrast, the unit mechanics and receiving clerks with whom the PSM examiner interacts are not required to have that degree or the equivalent.⁹

We also find that the PSM examiner has a greater group identity with nonunit employees. As mentioned above, Osetkowski is a member of the mechanical integrity team, which consists solely of nonunit employees, such as mechanical technicians and reliability engineers. That Team determined the need for the PSM examiner, and Osetkowski meets at least twice a month with the team. Further, he is supervised by Gaesser, who is also a member of the team. In addition, when parts or equipment are nonconforming, he alerts the members of the team. He also prepares and discusses reports for the team.

On the other hand, the factors of working conditions and geographic proximity favor accretion. Osetkowski shares a common pay scale, benefits, and working conditions with unit employees. He also spends most of his time working in proximity to unit employees.

Based on the forgoing, we conclude that the PSM examiner position does not share an overwhelming community of interest with the existing bargaining unit. On the contrary, the few factors favoring accretion—geographic proximity, working conditions, and wages and benefits—are strongly outweighed by those factors which, as set forth above, militate against it.

Accordingly, we conclude that the PSM examiner should be excluded from the bargaining unit represented by the Union.

ORDER

It is hereby ordered that the classification of "PSM quality assurance/quality control receiving examiner" is excluded from the unit of the Employer's employees represented by the Paper, Allied/Industrial Chemical Energy Local 1-6992.

⁶ See *Archer Daniels Midland Co.*, supra; *Towne Ford Sales*, supra.

⁷ Within the unit, the most similar position to the PSM Examiner is the process mechanic. These mechanics primarily install equipment and parts, but they inspect and test PSM equipment after installation. They will also occasionally use a micrometer, a feeler gauge, calipers, a scale, and a drill gauge to check other equipment such as pipes that they have installed or repaired.

⁸ Contrary to the Acting Regional Director, we find it immaterial that Osetkowski only takes two vacations a year. His replacement by nonunit mechanical technicians suggests that they share his skills and functions more than unit employees do.

⁹ Unit accounting planners and lab analysts, with whom Osetkowski does *not* interact, are required to have a 2-year Associate's degree or the equivalent.