

**Walker Boat Yard, Inc. and District 2, Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO, Petitioner. Case 9-RC-14191**

14 December 1984

**DECISION ON REVIEW**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 16 February 1983<sup>1</sup> the Regional Director for Region 9 issued a Decision and Direction of Election in this proceeding.<sup>2</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review.

By telegraphic order dated 15 April 1983 the Board granted the Petitioner's request for review on the unit issue. The election was stayed pending decision on review.<sup>3</sup> The Employer filed an opposition.

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

The Board has carefully considered the entire record, including the submissions of the parties in this case, and has decided to affirm the Decision and Direction of Election by the Regional Director for the following reasons.

The Employer is a Kentucky corporation primarily engaged in the repair and overhaul of boats and barges. The Employer's repair operations are conducted in the Walker Boat Yard facility (the boatyard), a self-contained compound located on the banks of the Tennessee River in Paducah, Kentucky.

Encompassed within the boatyard is the drydock area, machine shop, diesel engine shop, and electrical shop. Each is located within several hundred feet of the other. The drydock is an open area along the river with the electrical shop adjacent to

it. The machine shop and diesel shop are located in separate buildings.

The Employer's boatyard business is a functionally integrated operation with a significant level of interdependence between employees assigned to various repair functions. Normally boats are docked for repairs alongside the boatyard on the river and the employees work together to repair the vessel.<sup>4</sup> The drydock employees repair the hull or bottoms of the boats. Diesel shop employees repair, maintain, and overhaul or rebuild the boat engines. The machine shop employees resurface or reshape salvageable engine parts used by the diesel shop employees. The machine shop employees also work on parts of the tail and rudder shafts. The electrical shop employees perform electrical work, including disconnecting and rewiring the boat generators.

In preparing for their repair functions, the diesel shop employees and machine shop employees rely on the drydock employees for assistance. Thus, if an engine must be removed from the boat for repairs, the drydock employees may operate cranes to perform this task. Other drydock employees may assist in the removal process and in the transporting of the engine to the diesel shop. Drydock employees also may be called on to cut away obstructions which block the diesel shop employees' access to the engines to be repaired. Machine shop employees are assisted by the drydock employees when removing shafts and propellers from boats for repair in the machine shop.

We find therefore, in agreement with the Regional Director, that in the context of the overall boatyard operation, the work of the diesel shop employees is not functionally distinct.<sup>5</sup> Rather, we conclude that the diesel shop employees' work is necessarily integrated with and dependent on work performed by other boatyard employees in the unit found appropriate by the Regional Director.

The bargaining history here further supports the inclusion of the diesel employees in the broader unit found appropriate. The unit employees have been covered by a series of collective-bargaining agreements dating back to 1968, except for a brief period from 1969 to 1972.<sup>6</sup> The earlier agreements

<sup>1</sup> Plant Bargaining Committee for the Employees of the Dry Docks and Repair Operations, for Walker Boat Yard, Inc. was allowed to intervene in this proceeding.

<sup>2</sup> The unit found appropriate by the Regional Director consists of all production and maintenance employees, including all dry dock, machine shop, diesel repair and electrical shop employees employed by the Employer at its Paducah, Kentucky facility, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act. The Petitioner by its petition sought to represent a unit limited to approximately 11 employees, including all mechanics, mechanics helpers, and diesel repairmen employed by the diesel repair division at the Employer's Paducah, Kentucky facility. Alternatively, the Petitioner indicated its willingness to proceed to an election in any unit found appropriate. The Employer and Intervenor contended that only an overall unit of the diesel shop, machine shop, electrical shop, and drydock employees was appropriate.

<sup>3</sup> The Board denied the Employer's request for review of the Regional Director's finding that there is no contract bar to the filing of this petition.

<sup>4</sup> Boats may also be raised out of the water or "dry docked" to be repaired.

<sup>5</sup> While our dissenting colleague notes that there is no interchange of function between the diesel shop employees and the other unit employees, it is quite clear from the record that the diesel shop employees could not perform significant parts of their work without the assistance of the drydock and machine shop employees. Although the diesel shop employees are primarily concerned with repair and overhaul of the diesel engines, they rely on the work of the machinists and on others in successfully carrying out the overall functions of the Employer's boatyard.

<sup>6</sup> As found by the Regional Director the bargaining unit was represented by the UAW in 1968 and 1969 and encompassed all hourly em-

*Continued*

with the Intervenor made specific reference to diesel engine mechanics, while the latter agreements contained wage levels for "mechanics." Various provisions make reference to all "employees" and it is undisputed that the contractual benefits for vacation, holidays, and insurance coverage are received by all employees.<sup>7</sup>

In view of the foregoing, and based on the record as a whole, we conclude that the Regional Director's finding that the diesel shop employees lack a sufficient separate community of interest to justify separate representation must be affirmed.<sup>8</sup>

Accordingly, the Decision and Direction of Election is affirmed.

The case is remanded to the Regional Director for Region 9 for the purpose of conducting an election pursuant to his Decision and Direction of Election.<sup>9</sup> Those eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of the issuance of this Decision on Review.<sup>10</sup>

MEMBER ZIMMERMAN, dissenting.

Contrary to my colleagues, I do not find the Employer's Walker Boat Yard (the boatyard), including a drydock area, machine shop, diesel repair shop, and electrical shop, to constitute a functionally integrated operation with such a significant degree of interdependence between employees as to render inappropriate the separate diesel repair shop unit sought by the Petitioner. Accordingly, on the facts discussed below, I would reverse the

employees, including those in the diesel shop. In 1972 the Employer recognized the Intervenor and since then has executed a series of agreements, all of which, in our view, covered the overall unit including mechanics, a classification which embraces the sought diesel shop employees.

<sup>7</sup> While the record shows that the wage schedules have not always been followed for diesel mechanics and that some discretion in this area has been left to the diesel shop manager, it is clear that diesel as well as machine shop employees enjoy wages that are 8 to 10 percent higher than those received by drydock employees. This divergence from the contractual rates does not, in our opinion, demonstrate that they have not been part of the contractual bargaining history.

<sup>8</sup> Since we, contrary to our dissenting colleague, have found that the series of collective-bargaining agreements did not exclude the diesel shop employees from coverage, we view the Petitioner's request for a separate unit of diesel shop employees as a petition for severance. In addition to the factors enumerated above, severance is further unwarranted in view of the Regional Director's finding that the diesel shop employees' skills are not sufficiently specialized to justify the establishment of a separate craft unit. Moreover, despite the limited contractual variances applicable to the diesel shop employees noted in the dissent, the long bargaining history on a yard-wide basis favors inclusion of these employees in the broad historical unit found appropriate by the Regional Director rather than the narrow petitioned-for unit *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966). In agreeing with his colleagues that the employees sought here are not severable as a separate craft unit, Member Hunter does not endorse *Mallinckrodt Chemical Works*, supra, in its entirety.

<sup>9</sup> As indicated in the Regional Director's decision, further processing of this case to an election is contingent on the Petitioner submitting an additional showing of interest for the unit found appropriate. Accordingly, the Petitioner must submit a sufficient showing of interest within 10 days of this decision or the petition will be dismissed, absent withdrawal.

<sup>10</sup> [Excelsior footnote omitted from publication]

Regional Director and direct an election in the petitioned-for diesel repair shop unit.

The diesel repair shop was identified by the parties at the hearing as a separate department. It is physically situated in a separate building located in the boatyard compound. Its employees, including mechanics, mechanics helpers, and diesel repairmen, are separately supervised by the diesel department manager and two supervisory foremen. Diesel department employees are specially trained to repair diesel engines. They are the only employees of the Employer who repair, maintain, overhaul, and rebuild diesel and other engines for the Employer and its customers, including diesel engine manufacturers for whom diesel department employees do warranty work. They spend most of their time working on engines aboard boats in drydock, but do more serious repairs in the diesel shop. They also travel to vehicles broken down on the road or at construction sites, and go on board ships traveling upriver to do engine repairs. The diesel department repairs most parts itself, sends others out to a local contractor, and sends limited types of parts to the machine shop for resurfacing. The diesel department at times engages drydock employees to perform major welding and cut away work on drydocked vessels. The record does not clearly establish that the diesel department's reliance on other segments of the Employer's operation is regular or substantial. In addition, there is no evidence of employee transfer.

As to terms and conditions of employment, the record establishes that diesel department employees work a day shift, while the drydock and machine shop employees work both a day and afternoon shift. Diesel department employees punch a separate timeclock, wear distinct uniforms, have a separate lunch area (as do the other departments), and have their own Christmas party. All employees are paid out of the same payroll. Insurance and leave benefits are uniform. Seniority is supposedly companywide, but no instance of its application exists on the record. Diesel department employees' wages, discussed in detail infra, are 8 to 10 percent higher than those of drydock employees and comparable to those of machine shop employees.

The majority finds that the similarities in terms and conditions of employment between the various departments of the Employer are the product of a series of collective-bargaining agreements covering all of the Employer's employees, including those in the diesel department, and that any deviation from the contractually proscribed terms with respect to the diesel department is not indicative of the fact that the diesel department should not be part of the broader unit they find appropriate. The facts which

follow, however, show that for some time the diesel department has not been treated as covered by any collective-bargaining agreement.<sup>1</sup> The absence of such coverage, while all other boatyard departments are covered by the contract, further supports a finding that a separate diesel department unit is appropriate.

In 1968, the United Auto Workers (UAW) was certified by the Board as the representative of a unit of all production and maintenance employees in the boatyard. A contract of approximately 1 year was executed, but shortly before its expiration the UAW went on strike. In 1969, the UAW disclaimed interest in representing the boatyard employees. In 1972, the Employer voluntarily recognized the Intervenor.<sup>2</sup> A series of four similar collective-bargaining agreements between the Employer and the Intervenor followed, the latest expiring on 1 July 1982. The contracts contain no recognition clause describing the bargaining unit, and while many benefit provisions, by their terms, apply to "employees" generally, noticeably absent from both the 1976 and 1979 agreements are earlier included references to "diesel engine mechanics." The wage scale included is one for mechanics, grades 1 through 6. But, any argument that this reference to mechanics is an abbreviation for the diesel engine mechanic classification is undermined by the Employer's testimony that all employees are classified as "mechanics."

Beyond the Employer's own admission that the contractual wage schedule and increase provisions have not always been followed to set the wages of diesel department employees, there is evidence that diesel department wages are set directly by the diesel department manager. This may explain why several in the department receive wages at or above the contractual maximum even though they do not possess the contractually enumerated skills of fitting, burning, and welding requisite to receiv-

ing such high wages. Further, the Employer's claim that the contractual wage scale represents the minimum to be paid diesel department employees, and is to be supplemented by unspecified merit increases and increases to keep department employees 10 cents above local "like-type" industry, is totally unsubstantiated.

Other provisions also indicate that the contract was not designed to apply to diesel department employees. Thus, the contract provides for three shifts, the first to run from 6 a.m. to 2:30 p.m.—the diesel department works one shift beginning at 7 a.m. and ending at 3:30 p.m. There is no evidence that the companywide seniority provision has ever been applied. The contract provides for a committeeman to serve the entire Company, but the designated individual never solicited the views of diesel department employees concerning proposals in advance of contract negotiations and has not been involved in diesel department grievance meetings. Also significant is the fact that diesel department employees were never involved in contract negotiations or ratification of the latest contract.

In sum, considering the Employer's identification of the diesel department as a separate department; the separate supervision; the distinct job functions of the diesel department employees; the lack of employee interchange between diesel department employees and other yard operations; and the limited applicability of the collective-bargaining agreement to diesel department employees evidenced in part by their many different terms and conditions of employment, I conclude that the diesel department constitutes an identifiable and homogeneous group with a community of interest separate and distinct from other boatyard employees.<sup>3</sup> Accordingly, I find that the diesel department constitutes a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

<sup>1</sup> The Board denied the Employer's request for review of the Regional Director's finding that there is no contract bar to the filing of this petition.

<sup>2</sup> See *Walker's Fuel & Service Co.*, 208 NLRB 158 (1974).

<sup>3</sup> In view of my conclusion that the terms and conditions of employment enjoyed by diesel shop employees have not been determined by collective bargaining for the broader unit, I do not view this as a severance case which would be controlled by application of the criteria of *Malinckrodt Chemical Works*, 162 NLRB 387 (1966).