

would continue to bargain with the Employer as the Bedford Gear Employees Association until the certification is amended by the Board, as requested in the motion.

It is clear from the above-described circumstances that the motion for amendment of certification constitutes an attempt to raise a question of representation. However, such a question can be resolved only by the timely filing of a petition and a secret ballot election among the employees concerned, and not by a motion to amend the certification.¹ Indeed, as the Board pointed out in the *Gulf Oil* case, granting such a motion in circumstances such as this would in effect result in the certification of the very union which less than a year before had been rejected by a majority of the employees. In accord with well-established Board policy, therefore, we shall deny the motion.

[The Board denied the motion for amendment of certification.]

MEMBERS FANNING and JENKINS took no part in the consideration of the above Decision and Order Denying Motion.

¹ *Gulf Oil Corporation*, 109 NLRB 861; cf. *Minnesota Mining and Manufacturing Company*, 144 NLRB 419.

International Brotherhood of Electrical Workers, Local No. 1081, and its agents, including officers A. D. Bentley, Steve Paulos, Mike Church, and William K. Groves and Utah Copper Division, Kennecott Copper Corporation and International Association of Machinists, Lodge 568

Utah Copper Division, Kennecott Copper Corporation¹ and International Association of Machinists, Lodge No. 568, AFL-CIO

Utah Copper Division, Kennecott Copper Corporation and International Brotherhood of Electrical Workers, Local Union No. 1081, AFL-CIO

Utah Copper Division, Kennecott Copper Corporation and International Union of Mine, Mill and Smelter Workers, for itself and on behalf of its Local 485. Cases Nos. 27-CD-45, R-2719 (20-R-834), R-2723 (20-R-838), and R-5114 (20-R-839). December 11, 1964

DECISION AND DETERMINATION OF DISPUTE AND DECISION AND ORDER CLARIFYING AND AMENDING CERTIFICATIONS

The proceeding in Case No. 27-CD-45 arises under Section 10(k) of the Act following charges filed by Utah Copper Division, Kennecott

¹ The name of the Employer appears as amended at the hearing.
150 NLRB No. 4.

Copper Corporation, herein called the Employer or Kennecott, alleging that International Brotherhood of Electrical Workers, Local No. 1081, and its agents, herein called IBEW, had, in violation of Section 8(b) (4) (D) of the Act, induced and encouraged employees to strike, and threatened strikes and picket lines for the purpose of forcing or requiring the Employer to assign certain work to employees who are members of the IBEW, rather than to employees who are members of International Association of Machinists, Lodge 568, herein called IAM, to whom the Employer had assigned the work in dispute and who are now performing the work.

A hearing was held before Hearing Officer Allison E. Nutt on November 19 and 20, 1963. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed.

The proceedings in Cases Nos. R-2719, R-2723, and R-5114 arise under Section 9(c) of the Act. On October 3, 1963, International Union of Mine, Mill and Smelter Workers, Local 485, herein called MMS or Mine-Mill, filed a motion to amend or clarify its certification in Case No. R-5114, issued August 4, 1963, as representative of a unit of Kennecott employees. Second and third amended motions were filed on October 14 and December 6, 1963. On October 14, 1963, Kennecott and IAM jointly filed a motion to amend or clarify the IAM certification in Case No. R-2719, issued November 25, 1963, and on December 5, 1963, Kennecott filed a separate motion in the same case. On November 20, 1963, IBEW filed its opposition to the joint motion of the IAM and Kennecott in Case No. R-2719, and moved that its certification in Case No. R-2723 be amended by inclusion of the machinist(T) classification in its unit. IBEW moved to dismiss Case No. 27-CD-45 on October 17, 1963, on the basis that the jurisdictional dispute had been submitted to the AFL-CIO trade disputes board.

On December 10, 1963, the Board referred the matters raised by the motions to the Regional Director for Region 27 for the purpose of a hearing with respect to the unit placement of the classifications of employees placed in issue by the motions filed by the parties. On February 4, 5, 25, 26, 27, 28, and March 2 and 3, 1964, a hearing was held before Hearing Officer Allison E. Nutt. All the moving parties participated in the hearing, adduced evidence, and argued orally on the record. In addition, International Union of Operating Engineers Local Union No. 3, AFL-CIO (herein called Operating Engineers or IUOE), Brotherhood of Locomotive Firemen and Enginemen Lodge 844, AFL-CIO (herein called BLFE), and Office Employees Inter-

national Union, Local No. 286, AFL-CIO (herein called Office Employees or OEIU), intervened at the hearing and participated fully.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases² to a three-member panel [Members Leedom, Brown, and Jenkins].³

Upon the entire record in these cases, the Board makes the following findings:

FACTS GIVING RISE TO CONTROVERSIES INVOLVED IN THESE CASES⁴

The Employer operates an open-pit copper mine and mills at Bingham Canyon, Utah. The mining process at the mine consists of the following steps: (1) drilling and blasting of ore and waste, (2) loading the ore and waste into some conveyance (either railcar or truck), (3) transporting the ore and waste to the mill and the waste dump. Incident to these operations are the maintenance functions performed on all of the Employer's equipment.

Organization at the mine dates back prior to 1943; however, in that year the Board ordered separate elections for various craft groups⁵ which resulted in certified units, as follows:

IBEW: The X-ray technician, armature winders, electricians, second electricians, third electrician helpers.

IAM: Shop leadmen, machinists, second machinists, third machinists, machinists' helpers, the coppersmiths, car repairers, second car repairers, car repairers helpers, welders, and drill repairmen.

IUOE: The electric-shovel engineers, electric-shovel pitmen, locomotive crane operators, compressor engineers, heating plant firemen, track-shifter operators, caterpillar-operators, pump-operator helpers.⁶

² IAM and Kennecott moved to consolidate the two proceedings, a renewal of their motion made when the Board directed a hearing on the motions to amend or clarify. In view of the fact that the subject matter of the jurisdictional dispute case, namely assignment of the electrical work performed by the machinist(T), and the motions to amend or clarify filed by Kennecott and IAM, and by IBEW seeking unit placement of the machinist(T) classification, involve essentially similar issues, we shall, for decisional purposes, grant the joint Employer-IAM motion and consolidate the two proceedings. The IBEW motion to dismiss the joint Employer-IAM motion to amend or clarify and its motion to dismiss Case No. 27-CD-45 are therefore denied.

³ The requests for oral argument by Kennecott, IBEW, and IAM are hereby denied as in our opinion the entire record in these cases, including supporting briefs, adequately sets forth the issues and positions of the parties.

⁴ The facts as set forth herein are based on the evidence and testimony presented at the hearings in the jurisdictional dispute proceeding and the hearing on the motions to amend or clarify.

⁵ *Utah Copper Company and Kennecott Copper Corp.*, 49 NLRB 901; *Utah Copper Company and Kennecott Copper Corp.*, 35 NLRB 1295.

⁶ Pursuant to stipulated election in Case No. 20-RC-3538, IUOE was certified June 10, 1959.

MMS: The remaining production and maintenance employees, including the axemen of the engineering department, student employees, toe samplers, assay helpers, and precipitation plant operators.

BLFE: Motormen, brakemen or motormen's helpers, hostlers and hostler helpers.⁷

Recognition clauses in the current contracts between the Employer and the Unions adhere specifically to the Board certifications, but additional classifications of employees have been included in most contracts.

In summary, the ore and its overburden or waste is drilled and blasted by employees represented by the MMS; the ore and waste are loaded by power shovels operated and maintained by Operating Engineers; and the railcars are run by members of the BLFE. The IBEW and IAM represent electricians and machinists engaged primarily in maintenance work. Most truckdriving jobs, other than those incident to some craft function, lie within the MMS unit.

As part of a major expansion program at the mine, the Employer is changing from a rail haulage system to a truck haulage system in the upper two-thirds of the mine. When completed, haulage of waste will be accomplished with eighty-five 65-ton trucks instead of railcars. At the time of the hearings the Employer had 20 such trucks in use.⁸ In addition, other equipment such as angle-dozers, road graders, drills, and small trucks will be needed. The Employer utilizes two types of heavy-duty haulage trucks. The conventional type has a transmission, electrical system, and drive train similar to the type used in passenger autos. The electric-drive truck, or Dart truck, of which the Employer has three, differs from the conventional type in that it has no transmission. In it the diesel motor turns a generator which provides electricity to a traction motor which in turn drives the wheels. In effect, a generator and electric motor replace the standard transmission, and the rest of the truck is the same as the conventional type.⁹ The Employer assigned the maintenance and repair of the electric-drive components on these three trucks to the IBEW. At the time of the hearing repairs on the electric transmission truck were performed by factory mechanics under manufacturer's warranty.

Service and repair of the new equipment is done in a newly constructed maintenance shop called the Yosemite truck shop. This facility, a building approximately 480 by 160 feet, is divided into 27 bays and has attached to it a warehouse section, an oil storage section, operations office, and ready room.

⁷ This unit was found appropriate in a separate case, *Utah Copper Co. and Kennecott Copper Corp.*, 23 NLRB 1160. Certification resulted at 25 NLRB 14.

⁸ Completion date for the changeover is June 1, 1967.

⁹ At the time of the hearing the Employer did not know how many electric-drive trucks it would ultimately acquire.

When the Employer started its new operation it established the following job classifications: haulage truckdriver, machinist(T), maintenance helper, lubrication man, and tire repairman. As a result of the new operations other jobs took different forms, either because of a change in the base of operations or because of added job responsibilities.

The Employer assigned the new classifications of employees in the following manner:

The haulage truckdriver was assigned to the MMS unit; the machinist(T), maintenance helper, the tire repairman, and the lubrication man were assigned to the IAM unit.¹⁰

MMS seeks in its motions to add the following alleged classifications to its certification: tire repairman, oil house man, service truckdriver, lubrication truckdriver, field repair truckdriver, line truckdriver, tire service truckdriver, repair gang truckdriver, and welders' truckdrivers. The joint Employer-IAM motion seeks to add the following classifications to the IAM certification: machinist(T), maintenance helper, lubrication man, and tire repairman. The Employer's motion to amend seeks to add the haulage truckdriver classification to the MMS unit.

THE DISPUTE IN CASE No. 27-CD-45

A. The business of the Employer

Kennecott Copper Corporation operates an open-pit mine at Bingham Canyon, Utah, with adjacent facilities for the refining and fabrication of metallic copper. The corporation ships goods directly outside the State of Utah valued at more than \$100,000 per year. The parties stipulate, and we find, that Kennecott is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

B. The labor organizations involved

As stipulated by the parties, the IBEW and IAM are labor organizations within the meaning of Section 2(5) of the Act.

C. The dispute and contentions of the parties

In addition to the facts earlier stated, the record reveals that early in 1963 the Employer announced to all unions representing its employees, including the parties hereto, that it intended to convert from a rail haulage system at its mine to truck haulage system. In May 1963 Kennecott decided to award the truck maintenance work to be done

¹⁰The designation (T) stands for truck. The maintenance helper is a junior machinist(T), and all of these employees work in the Yosemite shop.

in the new Yosemite shop to IAM and began negotiations with IAM for a supplemental working agreement to cover the new jobs. A supplemental agreement was signed September 18, 1963, and on September 24 the Respondent IBEW was so informed by the Employer. At the meeting of September 24 and at a subsequent meeting on October 1, the IBEW allegedly announced that it would establish a picket line at the Yosemite shop if the Employer opened the shop with IAM members rather than its members doing the electrical work. The specific work in dispute deals with the repair and maintenance of electrical components on the new heavy-duty trucks as well as other equipment serviced at the Yosemite shop. It does not include the electric drive and its components on the Dart trucks, which the Employer assigned to IBEW electricians. IBEW claims that repair and replacement of generators, starters, lights, ignition systems, electric transmissions, heaters, batteries, and electric traction motors comes within its jurisdiction as specified in its contract which gives it jurisdiction over "all work in connection with repair and maintenance of electric devices, apparatus and equipment" Hence it contends that all electrical repair work done at the Yosemite shop should be done by IBEW electricians.

The Employer takes the position that the IBEW contract assigns automotive electrical work to the IBEW only on components such as generators and electric motors after they have been removed from the vehicle. This work, the Employer contends, is still within the IBEW unit, though the Employer would not oppose a Board assignment of this work to the IAM.

The IAM claims that the work in dispute is a part of the traditional work of automotive mechanics; that automotive mechanics possess the necessary skills and experience to do electrical work on the trucks and other equipment; that the auto mechanics do this work in other shops of the Employer; that its mechanics do this work in other shops in Utah and nearby States; and that jurisdiction over this work has been awarded to it by the AFL-CIO.

D. Applicability of the statute

Section 10(k) of the Act empowers the Board to hear and determine the dispute out of which an 8(b)(4)(D) charge has arisen. Before making a determination of the dispute, however, the Board is required to find there is a reasonable cause to believe that Section 8(b)(4)(D) has been violated.

As indicated earlier, a meeting was held on September 24, 1963, attended by Pickering and Hays representing Kennecott, and Bentley, the IBEW business manager, Paulos, and Church representing

IBEW. The purpose of the meeting was to inform the union representatives of the Company's expansion program and of the job assignments to the IAM.

Pickering testified that both Bentley and Paulos responded to the assignment "to the effect that the day we started that (Yosemite) shop that there would be a picket line," and that Bentley meant "that there would be a strike on that basis." Pickering also testified that these same pronouncements were repeated at another meeting on October 1. According to Hays, Bentley stated at the September 24 meeting that when the Company commenced operating the Yosemite shop with machinists doing the electrical work under the machinist(T) classification, the Union would put up a picket line. Hays further testified that these same threats were repeated at the October 1 meeting by Bentley and Paulos, who objected to the Employer's assignment of "their work" to the IAM. Hays' notes of the two meetings reflect generally the areas of discussion, including the threat of strike action. Norden, the Employer's maintenance supervisor, was present at the October 1 meeting and corroborated both Pickering and Hays in describing the strike threats made by Bentley and Paulos.

Bentley and Paulos denied threatening strike action. Their testimony shows, however, that they did discuss the Employer's assignment in the two meeting dates and that the parties did discuss peaceful ways of settling their disagreements. Paulos testified, however, that he "emphatically stated that we weren't going to sit idly by and let our bargaining unit be withered away." Bentley also expressed the position that the terms and conditions of the IBEW contract were gotten through strike action and that he didn't want to see them eroded away.

Other matters were discussed at these two meetings, such as travel pay and peaceful ways of settling the dispute. Both company and union witnesses testified to these matters with substantial agreement.

Bentley stated that not only was no strike action threatened, but that under the terms of the contract the Union was precluded from calling a strike and that the union constitution forbade such action without prior approval of the international union. Yet Hays' uncontradicted testimony reveals that sometime in the latter part of 1962 Bentley stood by an approach road to the mine with a sign reading "IBEW Stop Here" and as a result a majority of the employees in the IBEW unit reported to work 2 hours late.

The record reveals general agreement as to what transpired at the two meetings except in regard to the alleged threats. The testimony of Pickering and Hays, corroborated by Norden and the notes taken by Hays at the meetings, that the union agents threatened strike action to get the electrical work assigned to the IBEW establishes a *prima facie* case. The bare denials of Bentley and Paulos, when viewed in

contrast to their admitted statements that they emphatically would not sit idly by and see their unit eroded, that their contract benefits had been gained by strike action, and the Bentley-inspired work stoppage a year before in spite of the no-strike clause in the contract, lend credence to the testimony of Pickering and Hays that the strike threats were in fact made. Accordingly, we find, on the entire record, that there is reasonable cause to believe that a violation of Section 8(b) (4) (D) has occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *The merits of the dispute*

1. Skills and work involved

Before establishment of the Yosemite shop both IAM machinists and IBEW electricians performed electrical maintenance work on various pieces of equipment. IAM and IBEW witnesses testified that at various times either an electrician or a machinist rewired, replaced a battery or bulb, or fixed a switch on a particular crane, track shifter, grader, drill, or dozer. In some job functions, such as maintenance of cranes and pumps, machinists and electricians work together. However, the IBEW electricians do all of the electrical maintenance on the railcars, which involves a thorough knowledge of electricity and the ability to work with sophisticated electrical generators, motors, and circuits.

There is a definite parallel between the electric-rail car and electric-drive truck. Basically, the systems are the same, except that the rail-car gets its power from an overhead wire while the truck has a diesel motor. The rest of the system, with generator, electric motor, braking grids, and controls, is the same.

Electrical components, including automotive equipment such as generators, motors, and switches, once removed from the equipment, are repaired in the electrical shop. This is not a part of the Yosemite shop and is represented by IBEW. Other electricians work only on locomotives and still others work on equipment in the field.

The record further establishes that the machinist(T) classification is an automotive mechanic engaged in the maintenance and repair of motor-driven equipment, and that the auto mechanics, or machinist classification, are in the IAM unit. Only 5 percent of the duties performed by this classification deals with electrical work, and this is limited to automotive electrical work, a function which machinists in the IAM unit have performed in the past. IAM machinists receive training in automotive electricity under the apprenticeship program, though this training does not deal with the drive components in Dart trucks.

We conclude that employees in either unit have the necessary skills and training to perform the disputed work on the regular trucks, but the IBEW electricians are clearly better qualified to perform maintenance work on the drive components of the Dart truck, which is strikingly similar to the work they now perform on the trains.

2. The certifications

The IBEW certification spells out the specific job titles in the IBEW unit and is restricted to electricians without defining whether or not the electricians' work includes automotive electrical work. The IAM certification includes machinists, or automotive mechanics. The work of such mechanics does appear to include electrical work incident to auto repair and maintenance.

3. Contract clauses

The IAM contract does not specifically include the disputed work in the jurisdiction of the IAM unit, but it is work that has always been done by IAM mechanics. The IBEW contract covers all work in connection with the repair and maintenance of electrical devices, but when viewed in the context of the IBEW certification and the primary job function of the IBEW unit, it would appear that the contract refers primarily to work on railcars rather than diesel driven trucks.

4. The assignment of the Employer and efficiency of operations

The Employer assigned the disputed work in accordance with its assignments of similar repair work on other haulage vehicles. Thus, repair of components such as generators which have been removed from the vehicles was assigned to the IBEW electrical shop which had repaired such devices in the past. Work on the electric-drive components of the Dart trucks was also assigned to the IBEW, because this work was similar to the work IBEW electricians had always performed. Electrical work on the heavy-duty haulage trucks was assigned to IAM machinists who had always done electrical repair work incidental to repair of truck motors. The Employer claims that it is more efficient to have all IAM mechanics doing repair work in the Yosemite shop, instead of requiring electricians to be present in the Yosemite shop to perform the electrical work in the shop which IAM mechanics could perform.

5. Custom and practices at Kennecott

It is apparent that IAM mechanics or machinists have customarily performed automotive electrical repairs. This is an important part of the skills of an automotive mechanic. That electricians are also ca-

pable of doing the work, and have done it in some instances, does not alter the custom. The Employer's practice of having electricians perform some of the functions in dispute does not, in our opinion, establish a practice so firmly entrenched as to be controlling. On the contrary, it has been the practice at the mine to have the machinists do almost all of the disputed categories of work.

6. Area custom and practice

The IAM contracts did not specifically cover electrical work, but machinists have always performed work on generators, starters, and auto ignition systems. IAM also introduced evidence to show that in the Salt Lake City area IAM machinists do all automotive electrical work on trucks used by Consolidated Freightways, a common carrier. The work the machinists do there is practically the same as is included in the machinist(T) classification but that employer has no electric-drive trucks. There is also testimony to the effect that at the Ray, Arizona, mine, MMS mechanics perform automotive maintenance; IAM mechanics do the work at the Phelps Dodge mine at Bisby, including work on 45-ton dumptrucks; and at the Anaconda mine at Butte, Montana, the IBEW electricians do electrical work on the electric-drive trucks.

In view of the foregoing, we conclude that the machinists represented by the IAM are entitled to the disputed work and shall determine the dispute in their favor. We rely particularly on the following facts: the machinists possess the necessary skills to perform the disputed work; the IAM certification includes automotive mechanics who have regularly done the disputed work at the Employer's mine; the IAM machinists have, by custom and practice, traditionally performed automotive electrical repairs, the IBEW contracts and certification refer primarily to work on railcars and not on trucks; and the Employer's assignment would result in a more efficient operation. In making this determination, we are assigning the work in dispute to machinists represented by IAM and not to the IAM or its members.¹¹

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the Act, and upon the basis of the foregoing, the Board makes the following determination of dispute:

1. Machinists in the unit represented by International Association of Machinists, Lodge 568, are entitled to perform the automotive elec-

¹¹ The assignment of the disputed work herein does not include work on the drive components of the Dart trucks which the Employer assigned to the IBEW. As the record clearly establishes that the IBEW electricians are qualified to do this work and the IAM machinists are not, we will not disturb this assignment in spite of the fact that the Employer expressed a willingness to have the Board assign this work also. Nor is this assignment intended to affect the Employer's assignment of repair work on components, which have been removed from the vehicle, to IBEW electricians in the electrical shop.

trical repair and maintenance work at the Employer's Yosemite truck repair shop at Bingham Canyon, Utah.

2. International Brotherhood of Electrical Workers, Local No. 1081 and its agents, are not and have not been lawfully entitled to threaten to force or require Utah Copper Division, Kennecott Copper Corporation, to assign the above work to employees engaged as electricians, who are currently represented by International Brotherhood of Electrical Workers, Local 1081.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Electrical Workers, Local No. 1081, shall notify the Regional Director for Region 27, in writing, whether or not it will refrain from threatening to force or require or forcing or requiring Utah Copper Division, Kennecott Copper Corporation, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to electricians rather than to machinists.

THE MOTIONS TO AMEND OR CLARIFY UNITS

A. Case No. R-2719

1. The machinist(T)

Only the IAM seeks inclusion of this new classification in its unit.¹² As the job was set up by the Employer, this classification of employee works only in or out of the Yosemite shop and the work is limited to maintenance and repair of 65-ton trucks, smaller nonhaulage trucks, graders, dozers, and related equipment. Only 5 percent of the machinist(T)'s time is spent on automotive electrical work, with the balance having to do with duties purely mechanical.

It is evident, and we find, that employees in the machinist(T) classification are auto mechanics who, by reason of their duties and conditions of employment, have a close community of interest with machinists in the IAM unit. We note that no other union seeks to represent this category. Since the machinist(T) came into existence after the certified unit was established, we find it constitutes an accretion to the existing IAM unit.¹³

2. Maintenance helper

The primary task of this classification is to assist the machinist(T) in his duties. The Employer assigned this classification to the IAM which claims the job; IBEW does not claim the classification, except to the extent that the job entails electrical work; and the Operating Engineers agreed to be bound by the Board's determination. All other unions have disclaimed.

¹² The IBEW, though seeking in Case No. 27-CD-45 part of the work assigned to machinist(T), does not seek to include that classification in its unit.

¹³ Cf. *Lee Way Motor Freight, Inc.*, 138 NLRB 937, 939.

Other than the facts that the maintenance helper works in the Yosemite shop, is in the line of progression of the machinist(T), and works with the machinist(T) as well as other classifications in the Yosemite shop, the record contains little about his job duties and functions. It appears that the parties have considered the machinist(T) and maintenance helper as one, both for purposes of developing a record and of unit placement. At one point in the record the company representative stated without objection that there was no contest in regard to the maintenance helper. In view of the fact that no other union seeks to include this classification in its unit, and the community of interest between this classification and other classifications in the IAM unit, we find that this classification constitutes an accretion to the IAM unit.

3. Tire repairman

The primary task of this classification is to change wheel assemblies (the tire and rim) in the shop, check air pressure, and break down and separate tires from rims after the assembly has been removed from the vehicle. Though most of his work has to do with 65-ton trucks, he also works on tires from smaller trucks and other rubber-wheeled equipment. All of his work is done in and from the Yosemite shop where he works with other IAM employees such as lubemen, machinists, and helpers.

He uses hand tools utilized by mechanical maintenance personnel in addition to hydraulic jacks, wrenches, pullers, presses, pincers, and a forklift specially adapted for tire handling. In the field, where he changes tires, the tire repairman, together with the machinist(T), has to use a truck-mounted crane or a forklift to remove the tires. Ninety percent of his time is spent working on tires from the 65-ton trucks. Haulage truck tires weigh 1,800 pounds each, are 7 feet in diameter, and cost over \$1,500. Tires on other trucks and equipment are considerably smaller. At another mine shop an employee in the MMS unit classified as an ambulance driver changes tires on trucks, but none of these tires is larger than three feet in diameter. Larger tires at that shop are changed by employees in the IAM unit.

Before the tire-repair function was established at the Yosemite shop the Operating Engineers changed the tires on equipment they operated. Large tires were changed by the Engineers in the field and apparently only the Engineers operated the cranes that were necessary for changing large tires. We note that the Engineers' unit includes no classification of tire repairman.

In the Employer's Nevada Mines Division the IAM represents the tire repairman, while in the Employer's Chino mining operations the tire repairman as well as the truck mechanics are represented by MMS.

IUOE contends that removal and replacement of tires on equipment operated by Engineers is within its unit.

The Employer and the IAM contend that the tire repairman should be in the IAM unit because he has a community of interest with other IAM machinists based on a common workplace, supervision, tools, and progression with other IAM machinists.

MMS contends that, before the advent of the haulage trucks, tire repairs were performed by an MMS member who also was the ambulance driver.¹⁴ The IAM certification does not specifically cover tire repairmen, and the MMS certification and contracts both include the tireman. In the MMS contract the ambulance man is listed and his job description includes tire repair and changing equipment as part of the duties of his job. MMS further points to cases in which the Board held that garage mechanics constitute a craft group and excluded other employees who work occasionally with craft mechanics and do not possess similar skills, are not primarily assigned to the craft group, and are not in the direct line of progression. This rule has been followed in two cases involving this same Employer at one of its mines and at a mill.¹⁵ MMS further contends, in an effort to rebut the contention that this classification is part of the IAM unit, that the Employer has created the line of progression by putting the tire repairman in the IAM unit with the machinist(T).

Thus, MMS contends that the newly created line of progression from tire repairman to machinist(T) should be given no weight; tire repairmen do not work with the machinist(T); and they do not possess or exercise nor are they required to possess or exercise similar skills and abilities as the machinist(T).

In view of the fact that this classification works together with other IAM classifications in and from the same shop and utilizes the same tools in the maintenance and repair of the Employer's new equipment, we find that there is a closer community of interest with the machinists in the IAM unit than with other employees in the MMS unit. Though the line of progression from tire repairmen to machinist(T) is newly created and not controlling, it does serve to establish further this community of interest. The tire-repair work done by the ambulance driver in the MMS unit bears little resemblance to the work done by the tire repairman, nor did the MMS certification contemplate work on tires used on 65-ton trucks which were not in use at the Employer's mine at the time the certification issued. Though the Operating Engineers represents classifications whose job duties include tire removal and re-

¹⁴The record shows that only 20 percent of his time was spent driving the ambulance and the rest in tire work and car washing.

¹⁵*Kennecott Copper Corporation*, 125 NLRB 107, where the Board found that truck mechanics are craftsmen, but helpers, welders, steam cleaner operators, and laborers, because they are not in the progression to the job of mechanic, should be excluded from the craft unit. In *Kennecott Copper Corporation*, 138 NLRB 118, the Board excluded handymen, oilers, and helpers from a craft unit of maintenance mechanics for the same reason.

placement,¹⁶ these employees do not repair tires, nor have they worked on tires from 65-ton trucks. Accordingly, as this classification was not in existence at the time of issuance of the initial certifications, and as this classification has a close community of interest with the machinists in the IAM unit, we find that the tire repairman constitutes an accretion to the IAM unit of machinists, and we shall amend the IAM certification to include the tire repairman.

4. Lubrication man

This newly created classification, assigned to the IAM unit by Kenecott, lubricates trucks as well as other equipment and works out of the Yosemite shop. When the changeover is complete, he will spend 80 percent of his time lubricating heavy-duty trucks and the balance on other equipment. He works with other machinist classifications and is in the recently established machinist(T) line of progression. This employee drives the lubrication truck, which is best characterized as a service station on wheels, and performs regularly scheduled lubrication on equipment in the field. Each truck has a crew of three men, and one of them drives 1 to 2 hours a day,¹⁷ with the rest of the time spent in lubrication functions.

The Employer and IAM contend that this classification is properly in the IAM unit because he works out of the Yosemite shop, is in the machinist(T) line of progression, and has common supervision and washroom facilities with the machinist(T). In addition, the IAM contract specifies, in describing the job duties of other classifications in the IAM unit, that machinists regularly lubricate equipment. We note that the contracts do not specify lubricating of Engineer-operated equipment or heavy-duty trucks.

IUOE elicited no facts in regard to the lubrication man, nor are the facts controverted. Its position is that Engineers have been greasing their own equipment and want to continue to do so. The IUOE representative at the hearing stated he had a letter, presumably from the Employer, to the effect that the Engineers will continue to grease their own equipment along with the greasing now being done by the lubrication man classification.

As no other labor organization seeks to represent this classification, and because the lubrication man works and is in the line of progression with other employees who perform maintenance work on the same equipment, we find that the lubrication man constitutes an accretion to the IAM unit. Accordingly, we shall amend the IAM certification to include this classification.

¹⁶ Truck crane driver (pit) and mobile crane truck driver.

¹⁷ The lubrication truck driver is an alleged job classification which the MMS claimed in its motion and is discussed *infra*.

5. The haulage truck driver

The Employer assigned this new classification of employee to the unit represented by MMS. BLFE claims that this classification is properly within its jurisdiction and the Operating Engineers agreed to be bound by whatever determination the Board makes. The other unions have disclaimed.

These employees engage in driving the large haulage trucks, carrying waste and ore. They report to the ready room at the Yosemite shop together with the other heavy equipment operators. All haulage truck drivers require a degree of training, and the record does not show that the employees represented by either MMS or BLFE have vastly superior skills or abilities. However, witnesses for the BLFE testified that their experience as brakemen helped in operating the 65-ton trucks.

The record further shows that members of the MMS unit drive other trucks at the mine under the Board's certification, but these trucks were limited to smaller, nonhaulage type vehicles.

BLFE contends that it was certified in 1940 and that the Board's decision gave it a unit of motormen, brakemen, and hostlers in the Company's haulage department. We note that the Board decision does make reference to a "haulage department," but does not certify a haulage department. Thus, BLFE reasons that any employee who hauls ore and waste, including the drivers of the new trucks, should be in its unit. BLFE contracts with the Employer, including the current contract, speak of the mine haulage service under the seniority section of the contract, and establish seniority for engineers, firemen, brakemen, etc. in the "Mine Haulage Service," "regardless of the kind of motive power used . . ." Under the rate establishment and adjustment procedure section of the contract the Company and the Union (BLFE) agreed that if the Company acquired new or different equipment requiring new job classifications or changing existing classifications the Company and the Union would agree on, and even arbitrate, new wage scales. Thus BLFE relies on both its certification and contracts as representative of employees in the mine haulage system to establish its right to have the haulage truck driver placed in its unit. Further, it contends that MMS is not the representative, either under its certification or contracts, of ore and waste haulage employees.

As for the work itself, BLFE contends that this is work that has always been performed by its members and that the only change involved is some new equipment which its members can easily operate. Further, its members have a great deal of familiarity with the haulage process. Lastly, BLFE contends that in recent contract negotiations over rate adjustment caused by new equipment and job classifica-

tions, the Company attempted to limit the BLFE work function to "train service," but that the parties continued use of the broader "mine haulage service."

The record shows that MMS drivers get paid \$23.77 per day and no preparatory time while BLFE members in the same classification earn \$25.83 per day plus 10 minutes "prep" time. Thus BLFE contends that the Employer made its assignment purely for economic reasons, and that as a result 180 locomotive engineers, brakemen, and firemen will lose jobs.

The Employer contends that MMS was certified in a residual unit which included truckdrivers and that MMS has contracted for these employees ever since, and that for this reason it assigned the new classification of haulage truck drivers to MMS. In addition, the Employer points out that BLFE was certified for and represents specific railroad jobs. Thus the Employer looks upon the new classification as an accretion to the MMS unit. The record also establishes that MMS represents the same type haulage drivers at other mines in the same kind of trucks. The Employer rebuts BLFE's contentions by claiming (1) there is no "mine haulage department" as such; (2) the contracts with BLFE which deal with "motive power" were "slanted" to railroad equipment and not trucks; (3) the original Board certification dealt with specific job titles—not a whole department; and (4) Board cases involving the BLFE and the Employer dealt with employees employed in rail operations or train operations. Thus, it argues, the BLFE certification and contracts are concerned solely with trainmen and related employees, which makes its assignment of truckdrivers to MMS valid. Finally, the Employer contends that BLFE's sole motivation is to provide jobs for its displaced members.

MMS contends that the BLFE certification is restricted to specific classifications in the train service and that the MMS certification covers a residual unit which specifically excludes all the other craft classifications and the BLFE classifications. The reference to a "haulage department" in the Board's Decision was a word of description and did not create a departmental unit, nor do the words "mine haulage service" or "train service" in the contracts or work rules create a departmental unit. The reference to motive power in the BLFE contract refers to train power—such as electric or steam—and not trucks.

Affirmatively, MMS contends that it has always represented the Employer's truckdrivers and has the authority to do so, regardless of the size and type of truck, under its certification and contracts, and MMS represents heavy duty truck drivers at the Employer's mines in Nevada and New Mexico.

The Board certifications show, in defining units among the employees of the Employer, that the MMS unit is comprised of residual

employees, i.e., employee classifications not specifically sought by other unions. Truckdrivers were included in this unit, both by practice of the parties and by reason of exclusion of the truckdriver classification from all other units. Thus all other units in the Employer's work force set forth specific job classifications, and none includes truckdrivers. The BLFE unit describes only certain job classifications, and each one is connected solely with the operation of trains. It is apparent that the BLFE unit, as contemplated in the original certification, was not departmental in scope to the extent that it encompassed a "mine haulage department" which the Employer claims does not exist. Rather the BLFE unit is set forth on the basis of the skills necessary in the operation of trains. If the BLFE unit is not a craft unit restricted to railroad men, it is a departmental unit of railroad operating employees. In either event, it does not encompass a haulage department as claimed by BLFE, and we find that contention without merit.

In addition, contracts between the Employer and BLFE speak in terms of individual job classifications. That selected parts of these contracts describe a "mine haulage service" or "train service" does not create a departmental unit of the scope claimed by BLFE, nor are we convinced that those phrases in the contracts are descriptive of something more than the train-operating work engaged in by the BLFE classifications. Hence, we conclude that the contracts do not contemplate, nor do they create, a departmental unit broad enough in scope to be considered a "mine haulage department."

The evidence is clear that truckdriver classifications were included in the MMS unit in the original Board certification and that MMS has represented and contracted for these classifications ever since. There is no doubt that the employee members of the MMS unit possess the requisite skills to perform this job function, and that the heavy duty truck drivers have a closer community of interest with other truckdrivers than with employees having the different and specialized skills of railroad operating employees. As the heavy duty truck driver classification was not in existence at the time of the Board certification, and in view of the foregoing, we find that this new classification constitutes an accretion to the MMS unit, we shall amend the MMS certification to include this classification.¹⁸

B. *Case No. R-5114*

1. Oil house man or warehouseman

There is a newly constructed warehouse connected to the Yosemite shop which is staffed by two employees classified as senior warehouse-

¹⁸The BLFE motion to stay or dismiss the motion to amend or clarify is therefore denied.

man and warehouseman. Their job duties are to receive, check, inspect, record, unload, store, and issue materials and supplies. Less than 5 percent of their time is spent in checking in and checking out trucks full of petroleum products, and this will increase to under 10 percent in the future. The warehousemen have been represented by the OEIU. MMS represents employees classified as oil house man at different parts of the mine whose primary duties include the dispensing of petroleum products.

MMS seeks to add the warehousemen at the Yosemite shop to its unit on the theory that these employees are oil house men and not warehousemen. The Employer contends that the employees in the Yosemite warehouse are not oil house men, that none work in the Yosemite area, and that the employees at the Yosemite shop warehouse are warehousemen and are properly in the OEIU unit.

As the record shows that the employees in the Yosemite warehouse perform warehousing duties exclusively, and that, incident to these duties, they spend only a small proportion of their working time in dealing with, but not dispensing, petroleum products, we find that they are warehousemen properly included in the OEIU unit. Accordingly, the MMS motion to clarify its unit to include these two employees shall be denied.

2. Alleged driving classifications

a. *Tire service truck driver*

The tire service truck is used to replace tires in the field and is operated by the tire repairman discussed earlier. The IAM tire repairman drives the tire service truck approximately 2 hours per week. He changes tires with the truck-mounted hoist and checks pressures. According to Employer's witnesses, there is no classification as tire service truck driver. This evidence is uncontroverted.

MMS contends that the tire repairman is properly in its unit for the reasons stated *infra*, and that under its certification, all driving jobs are in its unit.

b. *Lubrication truck driver*

Company witnesses state that there is no such classification in existence. This is the lubrication man who works out of the Yosemite shop and was discussed *supra*. One of the crew members who works on the lube truck drives it 2 hours per day. All the rest of the time is spent in lubricating vehicles. The Company contends no such classification exists. MMS contends it is a classification and claims it. IAM and Operating Engineers claim it if it exists.

c. *Field repair truck driver*

The evidence shows that the two field trucks are driven by the machinist(T) when making repairs on equipment in the field. No separate classification of field truck driver exists. The machinist(T) drives the truck 1½ to 2 hours per day. MMS claims it if it exists. IAM and IBEW agree to be bound by whatever determination is made by the Board.

d. *The line truck driver*

The line truck is driven by a journeyman lineman who works out of the electrical shop and is represented by IBEW. Company witnesses testified that there is no separate line truck driver classification, that the lineman drives the truck approximately 2 hours per day, and that no single lineman drives the truck all of the time.

IBEW contends that the classification exists and that it should be included in its units as does the MMS. The Employer contends this employee should be in the IBEW unit.

e. *Repair gang truck driver*

A five-man repair gang does maintenance and repairs on electric shovels and rotary drills. Normally the same man, a machinist, drives the truck used to transport this gang, and this man spends 1 to 1½ hours per day in driving. The gang is composed generally of a supervisor, machinist, machinist leadman, an apprentice, and helpers, all represented by IAM. Occasionally a welder will work with the crew. The crew reports to and works out of the Yosemite shop.

The Company claims no such classification as repair gang truck driver exists. MMS claims it if it exists. IAM and IBEW agree to be bound by the decision of the Board.

f. *Welder's truck driver*

The welding truck is used in conjunction with the repair gang truck. It is manned by two to five men classified as AS repair gang shovel engineers, and as AS repair gang machinist helpers and welders. The function of the crew on the welding truck is to maintain safety equipment and latch plates on the electric shovels and perform various welding jobs. Generally the same individual drives it 1½ to 2 hours per day and spends the rest of his time repairing shovels and drills. Employees who work from the welding truck are represented by IAM.

Employer contends no classification of welder's truck driver exists. MMS claims the job and IAM agrees to be bound by the Board.

g. Service truck drivers

In its motion to amend or clarify MMS sought this classification. The record reveals that this is a general term for all jobs which involve the driving of service trucks such as those discussed above. Thus, there is no evidence in the record concerning this alleged classification.

The parties stipulated that at the Employer's other mines in Nevada, Arizona, and New Mexico the Company has similar service trucks which operate in the same manner as in Bingham, that the employees who drive the service trucks are not classified as drivers, and that in Nevada and New Mexico they are represented by MMS, while in Arizona the Steelworkers represents the haulage truck drivers as well as operators of heavy equipment and MMS represents the remaining production and maintenance employees except machinists and electricians.

We find, on this record, that the classifications of tire service truck driver, lubrication truck driver, field repair truck driver, line truck driver, repair gang truck driver, welder's truck driver, and service truck driver do not exist, and that the motions to include these alleged classifications into the various certified units are without merit. Accordingly, the motions, to the extent that they seek to add these alleged classifications to existing certifications, shall be denied.

[The Board clarified the certification in Case No. R-2719 (20-R-834) by specifically including, in the description of the appropriate unit, the classifications of machinist(T), maintenance helpers, tire repairman, and lubrication man; clarified the certification in Case No. R-5114 (20-R-839) by specifically including, in the description of the appropriate unit, the classification of heavy-duty truck driver; and denied the motions to amend and/or clarify the certifications in these cases, except as specifically granted above.]

Lathers Local Union No. 62, Wood, Wire & Metal Lathers International Union, AFL-CIO and Belou & Co. Accoustics, Inc.
Case No. 15-CD-45. December 14, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following a charge filed by Belou & Co. Accoustics, Inc., herein called Employer or Belou, alleging that Lathers Local Union No. 62, Wood, Wire & Metal Lathers International Union, AFL-CIO, herein called Lathers, had violated Section 8(b) (4) (D) of the Act by engaging in conduct to force or require the Employer to assign certain disputed work to employees represented by Lathers rather than to employees represented by Carpenters Local Union No. 1846, herein called Carpenters.