

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**ELLANEF MANUFACTURING CORPORATION**

**Employer**

**and**

**Case No. 29-RC-9358**

**DISTRICT LODGE 15, INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERS, AFL-CIO**

**Petitioner<sup>1</sup>**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Dara Diomonde, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that the Employer, a New York corporation with its principal offices and places of business located at 97-11 50<sup>th</sup> Avenue, Corona, New York and 25 Aero Road, Bohemia, New York, is engaged in the manufacture of airplane parts. During the past year, which period is representative of its annual operations generally, the Employer purchased and received at its Corona, New York and Bohemia, New York places of business

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

materials valued in excess of \$50,000 directly from sources located outside the State of New York.

Based upon the stipulations of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks an election in a unit of all production and maintenance employees employed by the Employer at its Corona, New York, location. The Employer contends that the only appropriate unit consists of all production and maintenance employees employed at both its Corona and Bohemia locations.

The record shows that the Corona location consists of 7 buildings covering a five block area. The Bohemia facility is a 200,000 square foot building located on 12 acres of land that the Employer owns. The two locations are approximately 42 miles apart. According to the Employer's counsel, approximately 239 employees are employed at the Employer's Corona location and 181 work at its Bohemia facility. Manufacturing takes place at both locations.

Both facilities may perform work on the same product. Manufacturing on the various components of one product, the integrator kit, is performed at the Corona location while the final assembly is done at Bohemia. Conversely, the Bohemia location may begin work on a product and the Corona location may complete it. Two trucks transport products and other materials between facilities.

The two locations share a common computer system and data base. Their computer and telephone systems are interconnected through a "T-1" line.

The offices of the Employer's Chief Executive Officer (CEO), Chief Financial Officer (CFO), Vice President of Contracts, and Vice President of Materials, are located in Corona. However, the record shows that each location employs a substantial number of managerial personnel. The Bohemia facility employs a general manager, and each facility has a plant superintendent to oversee its day to day operations. Reporting to the plant superintendent at Corona are three assistant plant superintendents, a night shift supervisor and a maintenance manager. A day shift foreman, evening shift foreman, maintenance manager and electronic maintenance manager report to the plant superintendent at Bohemia. Each location has its own program managers, who appear to oversee the customer package from the acquisition of raw materials through the various stages of assembly. Each also appears to have at least one methods and engineering department. Both facilities employ a programming manager, who oversees a number of "N/C programmers." In addition, each facility employs its own Director of Materials, each of whom in turn supervise a purchasing manager and the program managers. The Director of Materials at each location reports to the Vice President of Materials at Corona. However, although major capital expenditures must be approved by the CEO, the purchasing managers at each facility are given some autonomy with regard to individual purchases. Although quality control at both locations is ultimately directed by a single Manager of Quality Assurance and his Assistant Manager, each facility has its own quality control supervisor. In addition, both locations employ human resource personnel. These individuals report to the Director or Vice President of Human Resources, who appears to work at the Corona facility. Each location maintains personnel files for its employees. Although the Corona location

maintains a duplicate set of personnel files for Bohemia employees, these files lack certain materials such as attendance and medical records.

With regard to hiring, each facility appears to be given considerable autonomy. At each location, the managers employed there periodically meet to determine their manpower needs. These needs are eventually communicated to the CEO, who must authorize any decision to add personnel. The plant superintendent at the facility which is filling the position, along with the supervisor or manager of the department being affected, interview the applicant. If the plant superintendent wishes to hire the employee, he makes this recommendation to the CEO and recommends a starting rate of pay. His recommendation regarding the applicant's wages is, in part, based upon the experiences and qualifications of the employee and the Employer's policies regarding wages. Both the applicant's hire and his rate of pay must be approved by the CEO before he can begin working for the Employer. However, there is no evidence that the CEO has ever rejected any recommendations regarding an applicant's hire or his or her rate of pay. Thus, the autonomy that each location retains appears to extend, to a certain degree, to establishing wage rates as well as making hiring decisions.

With regard to discipline, supervisory personnel at each location may issue written warnings for attendance. The CEO, Lee Pappas, testified that he must authorize all suspensions and discharges, and that he has rejected recommendations regarding terminations in the past. However, local managers may independently suspend or discharge employees for "gross insubordination." Local managers have persuaded Pappas to discharge employees whose terminations he initially opposed. Further, Louis David, the Plant Superintendent for the Corona location, admitted that he had once independently suspended an employee (one of the Petitioner's witnesses) for making obscene gestures at his

supervisor. Thus, as is the case with hiring, it appears that the Plant Superintendent at each facility is given considerable discretion with respect to discipline.

With regard to layoffs, the record shows that the decision to reduce personnel is made after consultations among the CEO, the CFO, and the managers at each facility. In the past, the CEO has both held separate meetings with the managers at each location, and held collective meetings that included managers from both facilities. As a result of these meetings, decisions are made as to the number of employees to lay off from each department. However, the selection of individual employees for layoff is left to the plant superintendent.

Pappas testified that employees may not be promoted without his approval.

Although the Employer recently implemented a company-wide reduction in overtime, the decision as to which employees at the two facilities will be selected for overtime is left to the plant superintendents and other local managers.

It appears that there is one Human Resources Manual for both locations. However, the Petitioner's witnesses had not seen the most recent manual. Employees at the two facilities receive the same health insurance, life insurance, sick leave, jury duty leave, vacations and holidays. They also participate in the same profit sharing plan and 401(k) plan. The Employer maintains uniform policies regarding work weeks, shift differentials and overtime pay. The Employer also sponsors a company-wide Christmas party to which all employees are invited. Although employees at the two locations are allotted the same amount of time for lunch breaks and coffee breaks, employees on the night shift at Corona are given one 20 minute coffee break, rather than two ten minute breaks. Pappas testified that the 20 minute break was requested by the night shift at Corona. Employees at both locations are required to carry identification badges.

When measured against the size of the work forces at the two facilities, interchange, both permanent and temporary, does not appear to occur frequently. Pappas testified that there have been “about a dozen” permanent transfers over the last five years. Of the five transfers that he recalled, only one had occurred during the last year. All five had been requested by the employees involved; some of these transfers were motivated by employees’ desires to work closer to their homes.

Most of the testimony elicited by the Employer regarding temporary interchange was lacking in detail and unsupported by any documentation, such as payroll records. Pappas stated that he “believed” that sometime in 1999, “two or three” production employees were temporarily transferred from Corona to Bohemia to help start up some machinery or components of machinery. He and David testified that either last year or this year approximately two maintenance employees had been sent from Corona to Bohemia to assist in the transfer and re-assembly of two machines. David also stated that in 1998, for a period of about 6 weeks, two maintenance employees from Bohemia would punch in at Corona, pick up materials, and return to Bohemia. He further asserted that on between seven and ten occasions over the last year, four maintenance employees at Corona had gone to Bohemia to work on gantries at Bohemia.<sup>2</sup> However, these individuals remained under the supervision of Corona personnel while working at Bohemia. Mechanics may also be sent from Corona to fix forklifts or other vehicles. With regard to some of the other examples elicited by the Employer, it was not clear whether they involved unit employees. An unspecified number of Corona’s quality assurance employees, whose unit

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<sup>2</sup> A gantry is a machine whose precise function is not clear from the record. It is not clear that these four employees would always travel to Bohemia together, and it appears that the group could, at times, consist of fewer than four employees.

placement was not litigated, have performed audits in Bohemia.<sup>3</sup> An expeditor also frequently travels to both locations. However, it does not appear that this individual performs production and maintenance work. Rather, he is responsible for overseeing the outside contractors the Employer utilizes, and spends a significant portion of his time visiting these contractors. It appears that only one production employee, Dino Cultsis, regularly works at both locations, and that the Employer allows him to begin and finish his week in Bohemia because it is nearer to his home.<sup>4</sup>

Although the Employer asserts that the employees at each facility maintain frequent contact with each other through Nextel phones and the numerous computer terminals located at each location, the Employer's only witnesses, Pappas and David, did not testify as to any specific instances in which contact had occurred. Nor did they provide details as to how many employees this contact involved. David asserted that 25 to 35 of the production employees at Corona use computers, and that computer terminals are also located in the quality assurance department and shipping and receiving departments. However, there are some production departments which do not utilize computers, and the record does not show the extent to which the utilization of computers involves person to person contact between employees at the different facilities. It appears from the testimony of the Petitioner's witnesses that at least some employees use their computers solely for the purposes of data entry and to help run the machines they operate.

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<sup>3</sup> The Petitioner contends that the quality assurance employees lack a community of interest with the production and maintenance employees and should be excluded from the unit. Since their unit placement was neither litigated or even discussed, I will allow them to vote subject to challenge.

<sup>4</sup> David testified that Cultsis has more years of service than any other employee and the Employer considered him to be a talented individual. At one point, Cultsis apparently expressed a desire to retire and subsequently changed his mind. It appears from David's testimony that Cultsis is allowed to start and finish the week in Bohemia, at least in part, to accommodate his wishes to be closer to home.

Similarly, while the Employer's witnesses emphasized that the two locations cooperate on various projects, and may provide assistance to each other (i.e. one facility performing deburring work that was initially assigned to the other location if that location is too busy to perform it), they provided few specifics as to instances in which this has occurred or the number of employees involved. Their assertions that shipping and receiving employees or maintenance employees at the two facilities may contact each other if they need parts or materials was similarly lacking in detail. The three employee witnesses who testified for the Petitioner, all employed at the Employer's Corona location, asserted that they have neither seen nor worked with any employee from Bohemia.

The Employer asserts that it coordinates a number of programs and committees that utilize employees, usually leadmen, from both locations. A safety committee, consisting of at least three individuals from each location periodically conducts tours of both facilities. Committees such as the Lean Manufacturing Committee and Continuous Process Improvement Committee attempt to eliminate wasteful practices and improve production processes. The testimony elicited by the Employer was generally lacking in detail as to how often these committees meet and how many unit employees serve on them. However, it appears that they contain very few unit employees. It also appears that some of the meetings conducted by these committees are only attended by employees from one location. The Petitioner's witnesses were generally unaware of the existence of these committees.

The Employer asserts that employees from one location have trained employees from the other, and that the Employer has sent employees to joint training sessions attended by employees from both facilities. However, many of the examples provided by the Employer did not involve recent or ongoing

training. According to David, within the last two or three years, quality assurance employees from Bohemia have been trained in Corona. Three years ago, about 15 to 20 individuals, some from Bohemia and some from Corona, were sent to Computer Associates, located in Long Island, for training on the Employer's Telesys system.<sup>5</sup> It is not clear how many of these were production and maintenance employees. Another individual, David Grynberg, has also trained employees from both facilities on this system. Every two years, a group of individuals that includes employees from both locations is sent to the International Machine Tool Show in Chicago. In 1998, 18 employees, divided into three groups of 6, all of them lead men or NC programmers, attended the show. It further appears that on approximately a yearly basis, the Employer has sent small groups of employees, numbering between 6 and 8, to Fredericksburg Virginia for training on the use of the Walters Grinder. The Employer has also sent employees to North Carolina to train on other machinery. However, David admitted that the Employer is very selective with regard to who is sent out for training. Thus, even when considered together, the record does not establish that a substantial portion of the employee work force at Corona and Bohemia (which, when combined number approximately 420 employees), train together on an ongoing basis.

It is well established that a unit, to be certifiable under Section 9 of the Act, need not be the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950). Rather, it need only be an appropriate unit. With regard to multi-location employers, the general rule is that a single location unit is presumptively appropriate unless the work force at that location has become so merged with that of other facilities as to cause that unit to lose its separate identity. Kendall

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<sup>5</sup> The Telesys system appears to maintain data on such matters as accounts payable, accounts receivable and inventory.

Co., 184 NLRB 847 (1970); Black and Decker Manufacturing Company, 147 NLRB 825, 828 (1964). Among the most important factors the Board considers to determine whether this has occurred are the geographical separation of the facilities, the autonomy of local management, the degree of interchange and the commonality of supervision. These factors are often interrelated. If the distance between facilities is great, extensive employee interchange is unlikely. Shared supervision is unlikely in such a situation as it would be inefficient for supervisors to spend time on the road travelling from location to location. Foodland of Ravenswood, 323 NLRB 665, 666 (1997). Similarly, where employee interchange is extensive, it is more likely that employees, who are transferred from location to location, will have occasion to share the same supervisor. In this regard, it is noted that the Board attaches considerably greater weight to temporary interchange than it assigns to permanent transfers. Bud's Thrift T-Wise, 236 NLRB 1203, fn. 6 (1978); Deaconess Medical Center, 314 NLRB 677, fn. 1 (1994); Foodland of Ravenswood, supra at 667. Once an employee has been permanently transferred, it is less likely that his supervision will change or that he will share the same supervisor as an employee from another facility. Similarly, temporary interchange is accorded little weight, if this "interchange" chiefly involves travelling to a location to pick up or drop off work, and the employee remains under the supervision of his original supervisor while at that location. Bowie Hall Trucking, Inc., 290 NLRB 41, 43 (1988). Moreover, as the Petitioner points out, the Board attaches little weight to voluntary transfers instigated at the employee's request, presumably because such transfers are not necessary to conduct business operations and are not a harbinger of future interchange. First Security Services Corp., 329 NLRB No. 25, fn. 5 (1999); AVI Food Systems, 328 NLRB No. 59 (1999); D&L Transportation, 324 NLRB 160, fn. 7 (1997); Foodland of Ravenswood, supra at 667, Bowie Hall Trucking, supra at 43.

In the instant case, the distance between locations (42 miles) is substantial.<sup>6</sup> With regard to the permanent interchange that has occurred, a factor to which the Board assigns little weight, it is noted that many of the employees involved requested these transfers, and that they requested them because of the distance between facilities and because they wished to work closer to home. Temporary interchange is rare. J&L Plate, Inc., 310 NLRB 429, 430.<sup>7</sup> With regard to the one employee who regularly works at both facilities, it appears that the Employer allows him to travel to both locations to accommodate his desire to begin and finish the week closer to home. As earlier noted, many of the maintenance employees who have been sent to perform work at Bohemia remain under the supervision of Corona's management while doing so. Another example cited by the Employer involved employees from the Bohemia facility stopping off at the Corona location to pick up materials and then returning to Bohemia.

There is little, if any, day to day contact among most Corona unit employees and employees working at Bohemia. The employees at the two locations are separately supervised on a day to day basis. There is no evidence that supervisors stationed at Corona have supervised employees working in Bohemia, or that supervisors from the Bohemia facility have supervised employees working at Corona.<sup>8</sup> The two facilities retain substantial autonomy with respect to hiring, discipline, and the assignment of overtime, with the plant superintendents playing a significant role in each. Although the two locations share the same employee manual, and their employees enjoy the same benefits,

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<sup>6</sup> It generally takes over an hour to drive from Corona to Bohemia.

<sup>7</sup> In J&L Plate, supra, the Board noted that where the combined size of the 2 plants was 172 to 182 employees, there had been only 20 temporary transfers, over a three to four year period.

<sup>8</sup> Although David stated that he often visits the Bohemia location to assist its Plant Superintendent on various projects, the record does not establish that he supervises production and maintenance employees working there during these visits.

it appears that the plant superintendent at each facility plays a significant role in establishing initial wage rates. Moreover, when compared to interchange and local autonomy, centralization of labor relations policies and similarity in benefits play a relatively minor role in determining the appropriateness of a single location unit. J&L Plate, supra at 429 (1993); D&L Transportation, supra at fn. 8. The fact that all employees are invited to a Christmas party, a point that was debated vigorously during the hearing, “provides little basis for overcoming the single facility presumption.” Foodland of Ravenswood, supra at fn. 6. While it is undoubtedly true, as the Employer points out, that the two facilities cooperate on various tasks, and that work on the same product may be performed by both locations, the Board accords relatively little weight to product integration in determining the appropriateness of single location units. Black & Decker, supra at 828; Dixie Belle Mills, Inc., 139 NLRB 629, 631 (1962); J&L Plate, supra at 430. I thus find that the Employer has failed to rebut the Board’s single location presumption.<sup>9</sup> Overall, in view of the high degree of autonomy of the two plants regarding hiring, disciplining, setting initial wage rates and day to day to supervision, the minimal temporary interchange when compared to the large

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<sup>9</sup> In its brief, the Employer cites numerous cases in support of its contention that the Board’s single facility presumption has been rebutted. Without describing each case, these cases, even as summarized by the Employer, are clearly distinguishable from the instant matter. For example, in Neodata Product/Distribution, 312 NLRB 987 (1993), a case the Employer discusses in great detail, the two facilities were three miles apart, and there was frequent contact between the employees at the two locations. Thus, once to twice a week, three employees from the employer’s 10<sup>th</sup> Street facility would go to the Washington facility to retrieve needed information and would be assisted in such tasks by employees at that facility. Employees from the 10<sup>th</sup> Street facility would also routinely go to the Washington facility to take the inventory of products the Employer warehoused for various customers. In addition, 24 times each year, employees at the two facilities would work together performing audits. In Eastmen West, 273 NLRB 610 (1984), there was frequent interchange, both temporary and permanent, among the salespeople, and the employees at the two warehouses shared the same supervisor. In Pickering and Company, Inc., 248 NLRB 772 (1980), there was frequent contact between the employees at the two facilities, and employees would transfer between the facilities to perform overtime work. In Commercial Testing & Engineering Co., 248 NLRB 682 (1980), the laboratory department employees, who the Board found had been improperly excluded from the unit, worked 45 yards from the preparation department employees. The two mine laboratory employees, who worked 20 miles away, and were also added to the unit, were supervised from the main Charleston facility.

number of employees at each facility, and the lack of much contact between the employees at the two facilities, I conclude that the record evidence does not establish either that the Corona plant has been so effectively merged into a more comprehensive unit, or that the two facilities are so functionally integrated that the Corona location has lost its separate identity.

Inasmuch as the parties agree that any unit found appropriate should be limited to production and maintenance employees, I find the following unit appropriate for the purposes of collective bargaining:

All full time and regular part time production and maintenance employees employed by the Employer at its Corona, New York, location excluding all office clerical employees, guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been

rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club\_Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by December 6, 1999.

Dated at Brooklyn, New York, this 22nd day of November, 1999.

/S/ ALVIN P. BLYER

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