

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

THE BOEING COMPANY

Employer

and

Case 4-UC-352

LOCAL 1069, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL
IMPLEMENT WORKERS

Union Involved

**DECISION, ORDER AND CLARIFICATION
OF BARGAINING UNIT**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as 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,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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 Employer is a Delaware corporation engaged in the manufacture of aerospace products and services at its various plants located throughout the United States,

¹ The parties made offers of proof and, in the absence of any factual disputes, no testimony was taken.

including plants located in Ridley Park, Pennsylvania and Mesa, Arizona. For over forty years, the Union Involved has represented the production and maintenance employees at Boeing Philadelphia, which includes the Ridley Park Plant and others in and around the Philadelphia, Pennsylvania area. There are approximately 2,000 employees in the Boeing Philadelphia unit. The most recent collective bargaining agreement between the parties was effective from January 22, 1996 through September 1, 1999. The contract states in relevant part:

This Agreement made and entered into this 22nd day of January, 1996 by and between Boeing Helicopters (A division of The Boeing Company) at its centers located at Ridley Township, . . . Southwest International, . . . Philadelphia, Pennsylvania, and Wilmington airport, New Castle County, Delaware, . . . as existing on the effective date of this Agreement and for any additional plants, centers, or complexes the Company may establish in the United States, which are designated by the Boeing Company as being part of Boeing Helicopters (A division of The Boeing Company) . . . and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., and its Local . . .

In 1997, Boeing merged with the McDonnell Douglas Corporation.² As a result, a subsidiary of McDonnell Douglas, MD Helicopter Company, located in Mesa, Arizona, became a subsidiary of Boeing. The parties refer to this plant as Boeing Mesa. There are approximately 5,000 employees at the Boeing Mesa plant, with 1,500 of them working as production and maintenance employees. The United Auto Workers filed representation petitions seeking to represent these production and maintenance employees on three occasions prior to the 1997 merger, but was unsuccessful in the resulting elections. The employees employed at the Boeing Mesa plant are currently unrepresented.

On October 22, 1997, the Union Involved filed a grievance under the parties' collective bargaining agreement, stating in relevant part:

The union contends that the agreement as a whole between the parties is intended to require the Boeing Company to establish any divisions or operations in such a way that the new operation would be considered as an accretion to the existing operation of Boeing Helicopters in Delaware Cty [Ridley Park]. Accretion can be established by having the company integrate the operations of the new facility with the existing facility.

As a remedy the Union Involved requested the Employer:

To make such operational changes that may be necessary to accrete the Mesa, Arizona facility to our facility including integrating the workforce and labor relations functions.”

² McDonnell Douglas Corporation and its subsidiaries are erroneously referred to in the transcript as “McDonald” Douglas.

A hearing on the grievance filed by the Union Involved was held before Arbitrator Joan Parker on December 18, 1998. At that time, the Employer told the Arbitrator that it intended to file a unit clarification petition with the NLRB. The Arbitrator issued an Interim Award dated December 23, 1998, stating, inter alia, that “. . . it would be imprudent . . . to make a determination on some of the contractual issues, which are inextricably linked to the legal issues that have yet to be presented to the NLRB or the courts.” The Arbitrator retained jurisdiction pending further hearing should such a hearing become necessary.

On January 5, 1999, the Employer filed the instant petition seeking to clarify the bargaining unit referred to in its current collective bargaining agreement with the Union Involved by specifically excluding the 1,500 production and maintenance employees at its Boeing Mesa plant. The parties stipulated at the hearing that these employees are not currently subject to accretion to the Boeing Philadelphia unit. The Employer’s position, however, is that the Union’s grievance represents a demand that the Employer restructure its operations in order to bring about an accretion of the Boeing Mesa employees into the Boeing Philadelphia bargaining unit. Thus, the Employer asserts, the Union Involved is making a representational claim for the Boeing Mesa production and maintenance employees and attempting to mandate an accretion through arbitration, and that the Board, rather than arbitration, is the appropriate forum in which to resolve this unit issue.

The Union Involved takes the position that the Employer’s petition is premature. The Union Involved asserts that since the appropriate unit is the existing Boeing Philadelphia unit, and the Union is not asserting that the Boeing Mesa production and maintenance employees should be part of the Boeing Philadelphia unit at this time, there is no dispute and the petition should be dismissed. The Union Involved states that it is not demanding an accretion finding, but merely pursuing its rights under a lawful after-acquired clause in its collective bargaining agreement with the Employer.

The Board does not permit clarification of a unit mid-contract when that unit is clearly defined by the parties’ agreement. *Wallace Murray Corp.*, 192 NLRB 1090 (1971). However, the Board has consistently entertained unit clarification petitions to settle questions whether employees in new or newly acquired facilities are an accretion to an existing unit. *Super Valu Stores*, 283 NLRB 134, 135–136 (1987); *Pilot Freight Carriers*, 208 NLRB 853 fn. 8 (1974); *Germantown Development Co.*, 207 NLRB 586 (1973). Accretion determinations do not depend upon contract interpretation but involve the application of statutory policy, standards, and criteria and are matters for decision by the Board rather than an arbitrator. *Marion Power Shovel*, 230 NLRB 576, 577–578 (1977).³ In the instant situation, the issue presented is whether the existing unit should be

³ *St. Mary’s Medical Center*, 322 NLRB 954 (1997), is inapplicable as their deferral to the arbitrator’s award was limited to contract interpretation - the meaning of the “600 hour” exclusion language of the recognition clause. Here, deferral to an arbitrator would mean deferral on resolution of a statutory policy, something the Board will not do.

clarified to exclude employees at a newly acquired facility. Accordingly, this determination is one for the Board to make. *Super Valu Stores*, supra., 283 NLRB 134, 135 (1987).

With respect to the Union Involved's contention that the petition is premature since the Employer has not effectuated any restructuring of its operations to bring about an accretion, I find the argument lacking in merit. The time for testing the appropriateness of the accretion is the date of acquisition. *Borden, Inc.*, 308 NLRB 113, 122 (1992). Accordingly, I find that the petition is not premature and I shall clarify the unit.

The unit description, on its face, encompasses not only Boeing Philadelphia, but also, "any additional plants, centers, or complexes the Company may establish in the United States, which are designated by the Boeing Company as being part of Boeing Helicopters (A division of The Boeing Company)." Such "after-acquired" contractual clauses are not, under Board law, interpreted in a literal fashion. *Kroger Co.*, 219 NLRB 388, 389 (1975). In *Retail Clerks Local 870 (White Front Stores)*, 102 NLRB 240 (1971), and in *Frazier's Market*, 197 NLRB 1156 (1972), the Board imposed, as a condition to finding such clauses valid, a requirement that the employees in the new facility "by secret election or by some other evidence" consent to their inclusion in the broader unit. *Frazier's Market*, supra, 197 NLRB at 1157. There is no claim or evidence in the instant case that the production and maintenance employees in Boeing Mesa have indicated their desire to be included in the larger Boeing Philadelphia unit. Indeed, they are currently unrepresented and have rejected representation by the United Auto Workers on three occasions.

Bowman Building Products, 170 NLRB 312 (1968), cited by the Union Involved, does not require dismissal of the subject petition. In *Bowman*, after concluding on the merits that there was no accretion, the Board declined to clarify the unit as the contractual unit was clearly limited to that plant employees and did not include language that could be read as encompassing the new operations involved therein. By contrast, in the instant case, the language of the contractual unit description specifically includes newly designated operations. Even if the Union Involved's grievance successfully required the Employer to make the necessary operational changes to integrate the new facility with the existing facility, if the new facility may stand as a separate appropriate unit, the Board will not find an accretion. See, *Save Mart of Modesto, Inc.*, 293 NLRB 1190, 1191 (1989) In view of the separate representational history in the Mesa unit and the extreme geographical distance between Pennsylvania and Arizona, I find that the Mesa employees do not constitute an accretion to the Philadelphia unit. See *Safety Carrier, Inc.*, 306 NLRB 960, 969 -971 (1992).

ORDER

IT IS HEREBY ORDERED that the Boeing Philadelphia bargaining unit represented by the Union Involved is clarified to exclude the production and maintenance employees employed by the Employer at its plant located in Mesa, Arizona.

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, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **January 6, 2000**.

Dated December 23, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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