

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**THE SECTIONAL DIE COMPANY d/b/a
WELLINGTON DIE DIVISION, A DIVISION
OF SHILOH INDUSTRIES¹**

Employer

and

Case No. 8-RC-16105

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) 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,² the undersigned finds:

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

¹ The Employer's name appears as amended at the hearing.

² The Employer has filed a brief which has been carefully considered.

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 therein.
3. The labor organization involved 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 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including programmers and C.M.M. Operators at the Employer's 100 Shiloh Ave, Wellington, Ohio facility but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

The Employer is an Ohio corporation located at 100 Shiloh Avenue, Wellington, Ohio where it is involved in the design, manufacturing, and repair of tools for the parts metal forming industry. There are approximately 62 employees in the unit found appropriate herein.

The Petitioner seeks a unit of production and maintenance employees. There is no dispute between the parties regarding the inclusion in the unit of the job classifications of tool and dye maker, machinist, EDM Operator, maintenance, general laborer, janitor, and apprentice.³ The Petitioner asserts that programmers and Coordinate Measure Machine ["C.M.M."] Operators share a community of interest with the production and

³ The record indicates that there is a four-year apprenticeship program that qualifies those completing the program to become tool and die makers.

maintenance employees and should be included in the proposed unit. The Employer disagrees and argues that the disputed classifications do not share a community of interest with the production and maintenance employees and it is inappropriate to include them in the petitioned-for unit.

The testimony by General Manager John Petrocelly and Roger Oldaker, a programmer and EDM Operator,⁴ describe the Employer's production process. In the first instance, a design engineer works with a customer to determine the type of tool needed by the customer and the necessary specifications. After designing and engineering the tool using a three-dimensional software package, the design engineer transmits the design electronically to a programmer. The programmer translates the design engineer's product into a computer language that can be read by the machines on the shop floor, and creates a series of manufacturing steps that will make that part. The programmer's instructions are transmitted to machines on the shop floor, where members of the petitioned-for bargaining unit manufacture the product. Finally, the C.M.M. Operator determines whether the manufactured tool satisfies the customer's specifications.

The Act does not require that the petitioned-for unit be the **most** appropriate unit, but only that it be **an** appropriate unit. **Overnite Transportation Co.**, 322 NLRB 723 (1996); **Morand Bros. Beverage Co.**, 91 NLRB 409, 418 (1950), enf'd 190 F.2d 576 (7th Cir. 1951). In deciding the appropriate unit, the Board first considers the Union's petition and whether that unit is appropriate. **Overnite Transportation**, at 723. A unit is appropriate if there is a sufficient community of interest among the groups of employees involved. **Swift and Co.**, 129 NLRB 1391 (1961).

In determining whether job classifications of employees share a sufficient community of interest to warrant inclusion in the proposed unit, the Board has set out various factors to be weighed, including degree of functional integration, common supervision, nature of employee skill and function required, interchangeability and contact among employees, work situs, and general working conditions, such as rate and method of pay, shifts, and general benefits. **Overnite Transportation Co.**, 322 NLRB 723, at 724 (1996); **Kalamazoo Paper Box Corp.**, 136 NLRB 134, 137 (1962). The discussion below examines the disputed job classifications in light of these factors.

PROGRAMMERS

As described earlier, the role of the programmer is to take the design engineer's product and translate it into a series of manufacturing steps that will be used to make the tool on the shop floor. The software package used by the design engineers is not compatible with that used by the machines on the shop floor, requiring the programmer to translate the design into a language that is understood by the machines. In addition, the programmer determines the size and diameter of the tool to be used and the feeds and speeds of the machine. The record indicates that the background of programmers includes experience in machining, particularly in the areas of computer numerically controlled ["CNC"] machining, as well as familiarity with computers. The Employer asserts that a background in drafting is also helpful. The record also reflects that it could take a programmer up to six months of training to learn the three-dimensional aspects of the job.

The Employer contends that the programmers lack a community of interest with the petitioned-for unit by comparing them with non-unit design engineers. Physically,

⁴ Electrical Discharge Machine operator

the programmers are situated next to the design engineer's office and are separated from the shop floor by a wall, a hallway, and doors. Testimony by the general manager indicated that design engineers use a software package called "Unigraphics" and that programmers are currently being trained to use it as well. The Employer emphasized that the machines on the shop floor do not use Unigraphics. The Employer also pointed out that only design engineers and programmers perform a process called "modeling/surfacing." The record contains some equivocal evidence that programmers "report" to Kenneth Farnsworth, the working programming supervisor. The Employer does not contend, in its brief, however, that Farnsworth is a supervisor within the meaning of the Act.⁵

However, the record evidence also shows that the company is upgrading and standardizing the software that runs the shop, so that eventually the machines on the shop floor will use Unigraphics. While it is true that both design engineers and programmers do modeling/surfacing, the programmers do modeling/surfacing only if the design engineers are busy. The record shows that programmers have a separate physical area in close proximity to the design engineers' work area, but the record clearly reflects that programmers are out on the shop floor running the machines when they are not doing programming work.

There is one shift of design engineers, but there are two shifts of programmers. Similarly, there are two shifts of tool and dye makers. Importantly, both the second shift of programmers and the second shift of tool and dye makers report to the same supervisor, the "Night Shift Production Foreman". Finally, the supervision of the

⁵ Since the record does not contain sufficient evidence to determine whether the working programming supervisor is a statutory supervisor I shall permit Farnsworth to vote subject to challenge.

programmers appear to be performed by the Operations Manager and the Production Manager, both of whom also supervise the tool and dye makers.

The record contains substantial evidence of a community of interest between the programmers and other unit employees. In this connection, all programmers are journeyman tool and dye makers who began their employment by working on the production floor. There are no special degrees needed for programmers.

There is substantial working contact between the programmers and other unit employees. Machinists can consult with programmers if they change the geometry of a tool or use a different cutter. Programmers discuss with the shop supervisor which machine is best suited to carry out a design.

The rate of pay for programmers is \$15 - \$18/hour, within the range of the \$13 - \$19/hour paid to tool and dye makers. Finally, programmers share basic employment benefits with those in the petitioned-for unit: they are paid on the same day and in the same manner; they are subject to the same work rules; and have the same eligibility for vacation, health insurance, a 401K and pension plan.

With respect to the community of interest factors, the record clearly establishes that, in addition to functional integration, the programmers share common supervision with the shop employees; there is similarity in skill in that the programmers are all journeymen tool and die makers; there is substantial temporary interchange by virtue of programmers temporarily running machines on the shop floor. In addition, there is considerable contact between the shop floor employees and the programmers; and the programmers share general working conditions with the proposed unit, including the same shifts, similar wages, and the same overall benefits.

On the basis of the foregoing and the record as a whole I find that the programmers should be included in the unit.

C.M.M. OPERATOR

The Coordinate Measure Machine [“C.M.M.”] Operator determines whether tools satisfy the customer’s specifications. The tools may be manufactured in the Employer’s shop or come from an outside facility. The C.M.M. Operator also calibrates tooling gauges. The C.M.M. Operator performs his job functions through use of a software package in order to determine if the manufactured tool meets the customer’s specifications. The tool has an electronic probe that will give the C.M.M. operator a read out to indicate whether the part is acceptable. This information is shared with the tool designer, tool and dye supervisor, quality control continuous improvement supervisor, and at times, the tool and dye maker and supervisor of tool and dye makers. The record indicates that the C.M.M. Operator will typically have a background that includes statistics and inspections, a particular knowledge of inspection of equipment and tools, and that some type of computer background is helpful as well.

The C.M.M. Operator has the authority unilaterally to reject a part or a gauge that does not conform. He gives a report on the non-conforming tool to the Tool and Dye Supervisor, the Operations Manager, or the Design Engineer Manager, and that individual bears the responsibility for taking the information further and determining why the tool or gauge is not in compliance.

The C.M.M. Operator receives an hourly wage of \$14 to \$17/hour, within the range of the wages for tool and dye makers. He reports to the Manager of Continuous Improvement and Quality, and is the only hourly employee reporting to that particular

manager. However, the record evidence indicates that the C.M.M. Operator also takes instruction from the Supervisor of “Dye Try Out,” who also supervises shop floor employees. There are tool and dye makers who have been trained to do aspects of the job of the C.M.M. Operator. The evidence presented seems to indicate that this ensures coverage for times when the C.M.M. Operator is on vacation, or during a deadline job which occurs after his shift has ended. While performing such duties on the coordinate measure machine, tool and dye makers continue to report to the Supervisor of Tool and Dye; not to the Manager of Continuous Improvement and Quality. The record also indicates that, up until six weeks prior to the hearing, the C.M.M. Operator reported to the Supervisor of Tool and Dye.⁶

With respect to the work situs of the C.M.M. Operator, the coordinate measure machine is in its own room, separate from the shop floor, but in the general area of the programmers and design engineers. Testimony by General Manager Petrocelli establishes that the reason for a separate room is because the machine requires a temperature-controlled environment. However, the C.M.M. Operator is not confined to that room, and also performs work duties out by the presses on the manufacturing floor. Finally, tool and dye makers assist the C.M.M. Operator in transporting parts between the manufacturing floor and the C.M.M. room.

The C.M.M. Operator works on the first shift. He shares the same vacation eligibility, health insurance eligibility, 401K plan, pension plan, holidays, and leave of absence policy. He is governed by the same work rules, his pay of \$14 to \$17/hour is

⁶ The record is silent as to why there was a change in reporting paths.

within the range of pay for tool and dye makers,⁷ and he is paid on the same day and via the same method as the tool and dye makers.

Overall, it would appear that the C.M.M. Operator is a quality control employee, as a substantial part of his work involves determining whether a part or tool conforms to specifications. The Board includes quality control employees in a bargaining unit when they share a community of interest with production and maintenance employees. **Blue Grass Industries**, 287 NLRB 274, 299 (1987); **Ambrosia Chocolate Division of W. R. Grace**, 202 NLRB 788 (1973). In the instant case the C.M.M. Operator shares the same benefits, is subject to the same work rules as the production and maintenance employees, interacts with the tool and die makers, and takes direction from the supervisor of the shop floor employees, in addition to the Manager of Continuous Improvement and Quality. On the basis of the foregoing, it is appropriate to include the C.M.M. Operator in the petitioned-for production and maintenance unit.

On the basis of the foregoing and the record as a whole I shall include the C.M.M. Operator in the unit.

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 those 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 which commenced less than 12

⁷ Record evidence shows tool and die makers range from \$13 - \$19/hour.

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 may vote if they appear in person 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 shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their address that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Col.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 314 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to

comply with this requirement 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. 20570-0001. This request must be received the Board in Washington by **October 18, 2000**.

Dated at Cleveland, Ohio this 4th day of October, 2000.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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