

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FONAR CORPORATION

Employer

and

Case No. 29-RC-10051

LOCAL 455, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL, ORNAMENTAL
AND REINFORCING IRON WORKERS, AFL-CIO

Petitioner¹

DECISION AND DIRECTION OF ELECTION

The Employer, Fonar Corporation, develops and manufactures magnetic resonance imaging (“MRI”) machines. The Petitioner, Local 455, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO, filed a petition under Section 9(c) of the National Labor Relations Act on June 23, 2003, seeking to represent a unit of the Employer's production and maintenance employees. The Employer contends that “data entry/document control clerks” must be included in the unit as plant clerical employees who share a strong community of interest with the production employees, whereas the Petitioner contends that they must be excluded as office clerical employees.² A hearing was held before Emily DeSa, a hearing officer of the National

¹ The Petitioner’s name appears as amended at the hearing.

² The parties initially disputed the unit placement of other classifications as well, but they were able to reach agreement on those classifications during the hearing. The Employer then withdrew its opposition

Labor Relations Board.

As discussed in more detail below, I find that the data entry/document control clerks are plant clerical employees who share a sufficient community of interest with production and maintenance employees to mandate their inclusion in the unit.

Overview of the Employer's operations

The Employer develops and manufactures magnetic resonance imaging (MRI) scanners. Each scanner uses magnetic resonance from a 140-ton magnet to create high-quality images of each patient's body. The Employer has three facilities in Melville, New York, which are all involved in the manufacturing process. The facilities at 110 Marcus Drive and 102 Marcus Drive are adjacent to each other, and the facility at 405 Smith Street is 2 or 3 miles away from Marcus Drive. The Employer employs a total of approximately 253 employees at the three sites.

The Petitioner seeks to represent a unit of production and maintenance employees employed by the Employer at the three Melville sites, including installers, drivers, riggers, shipping and receiving employees, laborers, laborer-riggers, welders, assemblers, water jet operators, printing press employees, stock clerks, machinists, custodians, inventory/material control clerks, inspectors and expeditors. It appears from the record that there are approximately 110 to 120 production and maintenance employees in the petitioned-for unit.

The Employer's principal place of business, 110 Marcus Drive, contains offices for executives, marketing and sales employees, professional research and development employees,

to excluding draftspersons from the unit after the hearing. Thus, the only remaining disputed employees are the data entry/document control clerks.

engineers and draftspeople, field service employees, personnel administration, and other categories not relevant to this petition. In terms of the production process, 110 Marcus Drive also contains a rigging area and several bays of machines used for the construction and/or testing of the products. There are also areas for shipping and receiving, storage of parts, and a secure area for the storage of blueprints and drawings (as discussed in more detail below in connection with the data entry/document control clerks). Production employees who work at the 110 Marcus Drive facility include riggers, laborer-riggers, electronic assemblers, inspectors, shipping and receiving employees, stock clerks, inventory/material control employees and an expediter.

The Employer's 102 Marcus Drive facility contains the machine shop, where huge blocks of steel are drilled and sheared. Production and maintenance employees who work there include machinists, water jet operators, welders, laborers and assemblers.

The Smith Street facility contains a coil assembly area, where 4-foot magnetic coils are assembled onto pole pieces, which are subsequently brought to the rigging area. There is also a small printing press operation. Thus, the production employees at that site include coil assemblers and printing press employees.

The Employer's president is Dr. Raymond Damadian. The director of production, Jim Persoons, reports directly to Damadian. Although the company's hierarchy is not entirely clear from the record, it appears that at least two managers report to Persoons: engineering manager William Wahl and production manager Tony Tenore. Wahl supervises the engineers and the "supervisor of drafting and document control," Jim Green, who in turn supervises drafts persons and data entry/document control clerks. Numerous production supervisors were identified in

the record, including two machinist supervisors (Joe Roselli and Chris Spinosa), a shield assembly supervisor (Keith Saboe), a rigging supervisor (Frank Rogers), machine shop assembly supervisor (Jeff Hargrave), coil assembly supervisor (Kevin Schlesinger) and a supervisor (Carlos Valentine, title not indicated) who supervises the inventory/material control employees, stock clerks and shipping and receiving employees. It is not clear from the record whether these supervisors report to production manager Tenore, or directly to production director Persoons. The expediter, Donna Bruno, testified that she reports directly to Persoons.

All production and maintenance employees are scheduled to work from 8:00 a.m. to 4:30 p.m., and are paid on an hourly basis.

Data entry/document control clerks

The Employer employs three data entry/document control clerks in the 110 Marcus Drive facility: Milagros Morales, Lydia Peekman³ and Lorraine Aaron.⁴ They are supervised by Jim Green, who also supervises the drafts persons. Green, in turn, reports to the engineering manager, William Wahl.

Two of the data entry/document control clerks, Morales and Peekman, work in a secured room where blueprints are stored. (It is not clear from the record where this room is located: one witness said it is near the drafting room, and another witness said it is adjacent to the materials control area.) Access to the blueprint room is limited to those who have a code for entry. The data entry/document control clerks are responsible for providing copies of

³ Lydia Peekman is the daughter of personnel director Fred Peekman.

⁴ In the transcript, this clerk's name is spelled variously as "Lorraine Aaron," "Laureen Moran" and "Marie Reimann." For purposes of this Decision, she will be referred to as Lorraine Aaron.

blueprints to certain people who need them in connection with producing and installing the MRIs, including riggers, installers, machine shop employees and others. The clerks must make sure that production employees sign for the prints. Their job description (Board Exhibit 3) states that they are responsible for the return of each blueprint after installation or manufacture of the MRI, and that they also maintain a “blueprint control database.”

Production employees who need blueprints may come to the blueprint room to pick them up, or the clerks may deliver the prints to the production floor. Personnel director Fred Peekman testified that these clerks go out to the production floor “every day,” although he could not specify how much time they spend there. Engineering manager William Wahl also testified that the data entry/document control clerks are involved in the “day to day” production process, although he too neglected to estimate how much time they actually spend in contact with production employees.

Morales and Peekman’s other duties include entering bills of materials and updating the “material resource planning” (MRP) computer program. The personnel director also testified that the data entry/document control clerks spend 15% of their time “helping out in different areas,” such as filling in for stock clerks when necessary.

The other data entry/document control clerk, Lorraine Aaron, works in the same room as the expediter. She performs all the same duties described above for Morales and Peekman, and she also performs additional duties assisting the expediter in ordering parts. Specifically, the personnel director testified that Aaron communicates with the Employer’s inspectors and quality control staff regarding the reliability and quality of the suppliers’ parts. Wahl testified somewhat vaguely that Aaron interacts with production employees regarding their parts requirements. He

also stated that Aaron helps the expediter order parts, checks with vendors to see whether the parts will arrive on time, checks the MRP computer system, sends payment to parts suppliers, and enters those payments into the computer system.

Unlike many of the production and maintenance employees, data entry/document control clerks do not wear uniforms. The personnel director estimated that data entry/document control clerks earn between \$10 and \$12 per hour, in approximately the same range as laborers and assemblers, but less than some other production employees such as riggers. All employees have the same health benefit options available to them.

Discussion

The Board has acknowledged that “the distinction between office clericals and plant clericals is not always clear.” Hamilton Halter Co., 270 NLRB 331 (1984). Generally, the test is whether the employees’ duties are more related to the production process or to general office operations. Thus, the Board considers the nature of their work and its relation to the production process, as well as such community-of-interest factors as common supervision (or lack thereof), physical proximity of their work site, and the extent of interaction between the clerical employees and production employees.

In the instant case, the data entry/document control clerks provide blueprints to unit employees -- including riggers, installers and machine shop employees -- for their use in manufacturing and installing MRIs. It appears from the record that the clerks have daily contact with unit employees. They also “fill in” for unit employees such as stock clerks when necessary. These factors tend to indicate that they are plant clerical employees. On the other hand, the data entry/data control clerks are supervised by engineering supervisors rather than production

supervisors, their work site is located away from the production floor, and they do not wear a uniform as most production employees do. Thus, they share some community of interest factors with unit employees, but not others.

In past cases, the Board has found document control clerks and similar classifications to be plant clerical employees because their role in maintaining and distributing blueprints was directly related to the manufacturing process. For example, in Brown & Root, Inc., 314 NLRB 19 (1994), the Board included document control clerks in a unit of construction and maintenance employees where the clerks distributed blueprints and drawings that were “directly related” to the construction work, and they had daily contact with unit employees. In Waldorf Instrument Co., 122 NLRB 803 (1958), the blueprint control clerk was included as a plant clerical in a unit of production and maintenance workers because her function was “intimately related” to the production process. *Id.* at 810. *See also* Modern Homes and Equipment Co., 125 NLRB 714, 716-7 (1959)(clerks who copied blueprints for prefabricated homes included in production and maintenance unit); Solar Aircraft Co., 116 NLRB 200 (1956)(blueprint crib attendants as plant clerical employees in production and maintenance unit). Under these cases, the clerks’ close relation to the production process appears to be the paramount factor.

Based on the foregoing, I find that the data entry/document control clerks are plant clerical employees, principally because their supplying of blueprints is directly and intimately related to the Employer’s production process. Furthermore, this role brings them into direct contact with production employees on a daily basis. Although they do not share common supervision or work location with production employees, I find that, on balance, their duties are

more closely related to the production process than to general office operations. Therefore, I will include them in the production and maintenance bargaining unit found appropriate below.⁵

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, including the parties' stipulations and in accordance with the discussion above, I conclude and find as follows:

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

2. The Employer is a domestic corporation with its principal office and place of business located at 110 Marcus Drive, Melville, New York, and is engaged in developing and manufacturing magnetic resonance imaging (MRI) machines. During the past year, which period represents its annual operations generally, the Employer purchased and received at its Melville facility parts and materials valued in excess of \$50,000 directly from points outside the State of New York. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner, a labor organization, 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

⁵ The Petitioner indicated its willingness to proceed to an election in any unit found appropriate herein.

2(6) and (7) of the Act.

5. The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including installers, drivers, riggers, shipping and receiving employees, laborers, laborer-riggers, welders, assemblers, water jet operators, printing press employees, stock clerks, machinists, custodians, inventory/material control clerks, inspectors, expeditors and data entry/document control clerks employed by the Employer at its facilities located at 110 Marcus Drive, Melville, New York; 102 Marcus Drive, Melville, New York; and 405 Smith Street, Melville, New York, but excluding all drafts persons, designers, engineers, sales employees, office clerical employees, professional employees, field service employees, testers, research and development employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 455, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who

have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may 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 addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **August 6, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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 by the Board in Washington by 5 p.m., EST on

August 13, 2003. The request may **not** be filed by facsimile.

Dated: July 30, 2003.

/S/ ALVIN BLYER

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440-1760-2400 et seq.