

In the Matter of BROWN & SHARPE MFG. Co. and LOCAL 119, INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS & DRAFTSMEN'S UNION, A. F. OF L.

Case No. 1-R-2798

SUPPLEMENTAL DECISION

AND

DIRECTION

August 26, 1946

On June 6, 1946, the Board issued a Decision and Direction of Election herein¹ establishing two separate appropriate units at the Company's plant, i. e., Unit (1), consisting of all draftsmen, draftsmen's aides and apprentices, estimators, planners, and mechanical engineers; and Unit (2) consisting of all time-study men. On June 18, 1946, the Company petitioned the Board to reopen "the case as to time-study men or in the alternative for rehearing on the merits as to such employees." On June 24, 1946, the Board granted the Company's petition and issued an Order directing that a "further hearing be held for the purpose of taking evidence respecting the function and status of the employees in Unit (2)," the time-study men. The Board further ordered that the scheduled election in both units be held but that the ballots in Unit (2) be impounded pending the Board's final determination as to the status of time-study employees. On June 28, 1946, the Board certified the Union as exclusive representative of the employees in Unit (1).

The further hearing with respect to time-study men was held at Providence, Rhode Island, on July 5, 1946, before Robert E. Greene, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are, with one exception,² hereby,

¹ *Matter of Brown & Sharpe Mfg Co.*, 68 N. L. R. B. 487.

² The Trial Examiner rejected as inadmissible a copy of the minutes of a grievance proceeding which the Company offered in order to show the role played by time-study men in these proceedings. We find that the evidence contained in the offered exhibit is competent and relevant to the issues here involved. Accordingly, we reverse the Trial Examiner's ruling and order that the rejected exhibit be incorporated in and made part of the record as Company Exhibit 12.

affirmed. Oral argument, in which both parties participated, was held before the Board at Washington, D. C., on August 12, 1946.

Upon the entire record of the case, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

The Company's collective bargaining contract with the Union representing production employees prescribes hourly rates of pay for such employees. However, under the incentive wage plan in effect these hourly rates of pay are translated into piece-work rates by means of time studies. Thus, if after a time study, the standard time for any particular operation is fixed at one-half hour, the employee receives one-half of his hourly rate for each such unit of work performed. The operator is thus enabled, by expending greater effort, to earn more than his hourly rate prescribed in the contract. On the other hand, if the operator consumes more than the standard time allotted for an hour's operations he is given the hourly rate provided for in the agreement.

The function of determining the time standards for each operation is the primary responsibility of the time-study men. By means of a stop-watch and the application of specialized knowledge and experience gained both at the plant and at technical schools, the time-study men time each operation and initially fix the time standard for the job. The time study is not a mere routine operation but requires the use of judgment, particularly in respect to the making of corrective allowances.³

If the operator is dissatisfied with the results of the time study, he has the right under the collective bargaining contract to make the study a subject of a grievance proceeding. When this occurs, a second time study is usually made in the presence of a union official and a department foreman or subforeman. Thereafter a labor-management meeting is held, under the chairmanship of a representative of the Company, to consider the grievance. At this meeting, the time-study man who made the study concerning which disagreement exists carries the burden of explaining and justifying his findings. However, his appearance before the meeting is as an expert witness; he does not participate in negotiations leading to settlement of the dispute.

In addition to making time studies, time-study men estimate the probable cost of manufacturing new products, suggest methods of

³ The most important exercise of individual judgment is in the granting of an effort rating to the machine operator whose work is the subject of the time study. These ratings are often necessary in order to compensate for a temporary "slow-down" engaged in by the operator in order to affect the result of the study. The other allowances made by the time-study man adhere closely to formulae standards that apply throughout the Company's plant.

increasing productive efficiency and sign all allowance cards previously approved by a department foreman.⁴

The Company contends that the time-study men are "managerial" and "confidential" employees within the Board's definitions of those terms in the *Ford* case.⁵ Further, the Company argues that the definitions in the *Ford* case are too restricted, and that any proper definition of the terms "managerial" and "confidential" would include these time-study men. Accordingly, the Company urges that the time-study men be excluded from any bargaining unit.

In the *Ford* case, we defined "managerial employees" as "executive employees who are in a position to formulate, determine and effectuate management policies." We further limited the term "confidential employees" to "those employees who assist and act in a confidential capacity to persons who exercise 'managerial' functions in the field of labor relations." Although the time-study men are highly important technical employees in whom the Company places considerable trust and confidence and upon whose judgment it relies, we are of the opinion, and we find, that they are not "managerial" or "confidential" employees within the above definitions, to which we adhere. In making their time studies, they go no further than to supply the necessary factual basis for the operation of the Company's incentive plan. With respect to their participation in grievance proceedings, although the Company relies for the most part on the evidence given and the arguments made by the time-study men, adjustments at variance with the findings of the time-study men are negotiated at these meetings by higher management representatives.

In the final analysis we are confronted with the question as to whether these time-study men are "employees" within the meaning of Section 2 (3) of the National Labor Relations Act. We find that they are.⁶ We also find that a unit of time-study men is appropriate, and that the statute does not empower us to find, as the Company would have us do, that they belong in no appropriate bargaining unit whatsoever.⁷

We shall, therefore, direct the Regional Director to open and count the ballots in Unit (2) and to issue a Tally of Ballots therein.

⁴ Allowance cards are records of allowances made to operators of machines for additional time required to perform an operation because of the existence of nonstandard conditions in the work. The allowances are actually granted by the foreman. The time-study man's examination of these cards is perfunctory and his approval is, apparently, only a matter of form.

⁵ *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317.

⁶ Cf. *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannon Coal Division*, 66 N. L. R. B. 386; *N. L. R. B. v. Hearst Publications, Incorporated*, 322 U. S. 111, enforcing 39 N. L. R. B. 1245.

⁷ See the concurring opinion of the Chairman in *Matter of Packard Motor Car Company*, 64 N. L. R. B. 1212, 1215.

DIRECTION

IT IS HEREBY DIRECTED that the Regional Director for the First Region open and count the ballots in Unit (2) impounded pursuant to the Board's Order of June 24, 1946, and issue and serve upon the parties a Tally of Ballots therein.

MR. GERARD D. REILLY, dissenting.

The evidence introduced at the reopened hearing further documents my reasons, stated in my dissent to the original Decision and Direction of Election, for objecting to the inclusion of the time-study men in any bargaining unit. The majority admits that the Company places considerable trust and confidence in these employees. On their integrity in making their studies depends to a large extent the profitable and economic operation of the Company's plant. Also the record shows that time-study men represent management at grievance proceedings in the important duty of convincing the complaining employees of the correctness of the time study already adopted by the Company. As I said in the original decision, all the considerations which have been urged on this Board for not using the processes of the Act to compel employers to deal with unions representing their rank and file employees as representatives of their supervisors, as well, apply with even greater force to time-study men. The effect of this Decision is to subject to the discipline of the same parent organization both the employee who represents management in the conduct of the time study and at grievance proceedings, as well as the representative of employees. In my judgment the Decision we are here making further seriously distorts the principles of the Act.⁸

⁸ See my dissenting opinion in the *Jones & Laughlin* case cited in footnote 6, *supra*.