Mallinckrodt Chemical Works, Uranium Division *and* International Brotherhood of Electrical Workers, Local #1, AFL–CIO, Petitioner. *Case 14–RC–4564. December 28, 1966*

DECISION AND ORDER

On July 1, 1963, the Regional Director for Region 14 issued a Decision and Direction of Election in the above-entitled proceeding.[1] In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision, which was considered together with a statement in opposition filed by the Petitioner. Thereafter, on September 19, 1963, the National Labor Relations Board granted review, stayed the election, and remanded the proceedings for the purpose of taking evidence on all issues, including the craft status of the requested employees, the traditional representative status of the Petitioner, and the degree of integration of the Employer's operations.[2] Subsequently, a hearing was held before a duly designated Hearing Officer, whose rulings made at the hearing are free from prejudicial error and are hereby affirmed. After the hearing was closed, the parties timely filed briefs in support of their respective positions.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act, as amended, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons:

Petitioner seeks a unit composed of: All instrument mechanics, their apprentices and helpers in the Employer's instrument department at the Weldon Spring, Missouri, location. Although the Petitioner has asserted at the hearing and in its brief that it seeks severance of the instrument mechanics as a "functionally distinct and homogeneous traditional departmental group" and not as a craft—

[1] The Independent Union of Atomic Workers' motion for intervention, based upon its then current contract with the Employer for the production and maintenance employees, was granted without objection by the Hearing Officer in the initial hearing directed by the Regional Director.

[2] On October 11, 1963, the Petitioner moved for reconsideration, asserting it sought a *departmental* unit as opposed to a *craft* unit. The motion was denied on October 17, 1963.

a contention upon which it based its motion for reconsideration of the Board's order granting review—it has also, on the record and in its brief, asserted its willingness to "go along with any other unit that the Board may determine to be appropriate."

The Employer's Operations

The Employer is engaged at Weldon Spring in the purification of uranium ore and the manufacture of uranium metal under a cost plus fixed fee contract with the Atomic Energy Commission. It is the single facility contracting with AEC whose production process fully embraces the step-by-step extraction of uranium from its adulterated ores and converting it into a finished product in the form of solid metals, ultimately to be used by AEC and the Department of Defense.

The Employer's uranium division occupies a 200-acre tract consisting of between 40 and 50 buildings, staffed by about 560 employees. Of these, fully half are guards, supervisors, professional, technical, and clerical employees. The remaining production and maintenance unit is comprised of 130 production operators and approximately 150 maintenance employees of which 12 are instrument mechanics, the classification which Petitioner seeks to sever. At the remand hearing, the Employer established that its production process is highly complex and that its capital equipment required an expenditure upward of $25 million. In a great part of the Employer's operation, which is continuous, the product progresses through a closed-pipe system. Most waste and scrap materials are recirculated through the system, ultimately to be consumed in the fabrication of uranium in designated shapes. No other end product is produced, and no intermediate products are stored or merchandised. Yet, it is possible to, and the plant does, shut down on weekends and holidays. When the process is recommenced after a planned shutdown, there is some loss in product integrity until such time as the proper balance is achieved among the several systems. An unplanned shutdown necessitated by an operational failure could result in several days' production loss. Not surprisingly, many of the processes involve the handling of highly volatile, explosive, and inflammable materials, at which times special precautions must be taken.

A great part of the Employer's production process is instrumentally controlled by electrical, mechanical, thermostatic, and pneumatic devices. Thus, for example, raw materials are channeled through the system by means of electrical or mechanical limit switches. The temperature of ovens and closed pipes is controlled by valves and other regulators. In the process of extracting the pure uranium, flow, temperature, density, interphase control, and level control are all

regulated by instruments, mostly pneumatic, situated on a control panel. In the evaporation process, the triple effect evaporator, which operates continuously, is also regulated by means of a console. At the hydrofluorination stage, a panel board is utilized to control and regulate temperature, flow of hydrofluoric acid and hydrogen, the feed rate of uranium trioxide, and the rotational speed of screw reactors. It was also testified that any manual operation presently utilized is being replaced so that eventually the entire process will be instrumentally controlled.

Coordination of the Instrument Mechanics in the Production Process

It is the principal function of the instrument mechanic to make adjustments and alterations on improperly operating instruments so that the production process may continue unimpeded. Close to three-fourths of the repairs performed by the instrument mechanics occur at the place of the breakdown, that is, on the production line. While the job requirements of operator and instrument mechanic are clearly defined and do not overlap, the operator is required to work with and does assist the mechanic in order to permit a speedy repair and the continuation of production. It is also necessary that the activities between the two be coordinated so that the operator may read the panel and relay the reading to the instrument mechanic. The operator also manually operates the instrument in order to see that it is functioning properly. We conclude from the foregoing that the instrument mechanics role in the Employer's production process is uniquely and integrally a part upon which the production flow is dependent.

Instrument Mechanics as Craftsmen

The instrument shop is set apart physically from other departments at Weldon Spring. In charge of the 12 instrument mechanics is a foreman who reports directly to the superintendent of the instrument department. The superintendent in turn is responsible to the department manager. The instrument mechanic is identified by the blue hat which he must wear.

Instrument mechanics are classified as Trainee, Class B, A, and Special. Progression is by merit and does not occur automatically. In hiring instrument mechanics, the Employer seeks experienced mechanics so that hiring does not normally occur at the trainee or lowest level. The top graded instrument mechanic is responsible for the evaluation, installation, modification, calibration, maintenance, and dismantling of electronic, electrical pneumatic, mechanical, and hydraulic instruments. His work may be performed on temperature

controllers, scales, pressure relief valves, gas valves, transducers, Foxboro pneumatic equipment, dust detectors, alarm systems, level controls, vacuum gauges, pressure gauges, monometers, test equipment, vacuum tube voltmeters, and electrometers. Instrument mechanics do only the work described above and begin their day by reporting to their own shop where they receive assignments from their foreman. At the end of their workday they return to the instrument shop. Most of the instrument mechanics spend between 50 and 60 percent of their working day away from the instrument shop, and some of them are gone as much as 80 or 90 percent of the time. The instrument mechanic has his own equipment which includes the following: Wheatstone bridge, tube testers, perometers, potentiometers, frequency meters, resistance boxes, vacuum pumps, temperature baths, and draft gauges. Although there is no special apprenticeship program for instrument mechanics, the record shows that the Employer, when hiring instrument mechanics, seeks men with several years of industrial instrumentation background. When hired, the instrument mechanic is placed in one of the four classifications maintained by the Employer for instrumentation and, based on merit ratings, he progresses into higher rated classifications in accordance with his skill and experience. Only a top merit rated mechanic moves into the special classification. Normally it takes from 3½ to 4 years to advance from the lowest to the highest classification. At the time of the hearing, all of the instrument mechanics involved were either in the A or the special classification.

It is clear from the foregoing that the instrument mechanics are skilled workmen who work under separate supervision, and we find that the instrument mechanics constitute an identifiable group of skilled employees similar to groups we have previously found to be journeymen or craft instrument mechanics.[3]

Whether Petitioner Qualifies as a Traditional Representative of Instrument Mechanics

As indicated above, this case was remanded in part for the taking of evidence on whether Petitioner qualifies as the traditional representative of skilled instrument mechanics. The record discloses that although Petitioner did not as of the time of the hearing represent any instrument mechanics in separate craft units, it did number, among its members, employees performing duties similar to those regularly assigned to the instrument mechanics in this case. Petitioner is also a party to collective-bargaining agreements which

[3] *Union Carbide Corporation Chemicals Division*, 156 NLRB 634; *Marinette Paper Company*, 127 NLRB 1319; *Rayonier, Inc.*, 110 NLRB 1191; *Jefferson Chemical Company*, 98 NLRB 805.

assign the exclusive performance of instrumentation work to employees classified as electricians. Petitioner is a party to one collective-bargaining agreement which provides for the maintenance of an apprenticeship program for training electricians in certain functions which, in this case, are performed by the Employer's instrument mechanics. Twelve members of Petitioner have taken courses in instrumentation work presented at a St. Louis high school; the course, however, was not confined solely to instruction in all the various types of instrument work, but appears to have placed primary emphasis on work of the electrician craft. In addition to the foregoing, Petitioner relies upon the fact that its parent organization, International Brotherhood of Electrical Workers, AFL–CIO, has often participated in proceedings and has been granted representation rights for separate units of instrument mechanics.

The foregoing, in our view, falls short of establishing that Petitioner qualifies as a traditional representative of instrument mechanics of the kind involved in this case. However, for reasons stated below, we do not now view the Petitioner's failure to satisfy the traditional representative test as it has developed since the *American Potash* decision as in itself a decisive ground for dismissal.

Reconsideration of the *American Potash* Doctrine

Petitioner, relying on its showing that the instrument mechanics are craftsmen and on its claim that it qualifies as a traditional representative of such craftsmen, contends it has met the requirements set forth in the *American Potash* decision [4] for obtaining a craft severance election. On the other hand, the Employer, though not receding from its contention that the instrument mechanics are not true craftsmen and that the Petitioner is not, in any event, the traditional representative of such mechanics, argues that the *American Potash* decision improperly makes the question of severance turn solely on affirmative findings with respect to the above issues, ignoring many other relevant and weighty considerations. In this latter respect, the Employer places particular emphasis on the fact that the *American Potash* decision precludes, for all practical purposes, consideration of the duration and character of the representation which craft employees have received while being represented in a more inclusive unit, and completely rules out any consideration of the effect that integration of the functions of the craft employees involved in the proceeding with the overall production processes of the employer may have on the Board's unit determination. With respect to both points, the Employer urges that to the extent the *American Potash*

[4] *American Potash & Chemical Corporation*, 107 NLRB 1418.

decision forbids realistic consideration of bargaining history and integration of the craft employees' functions in the production process unless the case involves one of the so-called *National Tube* industries,[5] it is plainly discriminatory in application and requires reversal.

We believe there is much force to the Employer's arguments and contentions, and we have undertaken in this and other cases a review of our present policies regarding severance elections.

At the outset, it is appropriate to set forth the nature of the issue confronting the Board in making unit determinations in severance cases. Underlying such determinations is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation. The Board does not exercise its judgment lightly in these difficult areas. Each such case involves a resolution of "what would best serve the working man in his effort to bargain collectively with his employer, and what would best serve the interest of the country as a whole." [6] It is within the context of this declared legislative purpose that Congress has delegated to the Board the obligation to determine appropriate bargaining units. We do not believe that the Board can properly, or perhaps even lawfully, discharge its statutory duties by delegating the performance of so important a function to a segment of the affected employee body. Thus, we accept the court's view in *Pittsburgh Plate Glass* that "the Board was not authorized by . . . [the Act] to surrender to anyone else its statutory duty to determine in each case the appropriate unit for collective bargaining." (*Ibid.*)

The cohesiveness and special interest of a craft or departmental group seeking severance may indicate the appropriateness of a bargaining unit limited to that group. However, the interests of all employees in continuing to bargain together in order to maintain their collective strength, as well as the public interest and the interests of the employer and the plant union in maintaining overall plant stability in labor relations and uninterrupted operation of integrated industrial or commercial facilities, may favor adherence to the established patterns of bargaining.

The problem of striking a balance has been the subject of Board and congressional concern since the early days in the administration

[5] *National Tube Company*, 76 NLRB 1199; *Permanente Metals Corporation*, 89 NLRB 804; *Corn Products Refining Company*, 80 NLRB 362; *Weyerhaeuser Timber Company*, 87 NLRB 1076. See also *American Potash & Chemical Corporation, supra*, 1422.

[6] *N L R B.* v. *Pittsburgh Plate Glass Company*, 270 F 2d 167, 173 (C.A 4), cert. denied 361 U.S 943.

of the Wagner Act. In the *American Can* decision,[7] the Board refused to allow craft severance in the face of a bargaining history on a broader basis. The so-called *American Can* doctrine was not, however, rigidly applied to rule out all opportunities for craft severance.[8] Nevertheless, when Congress amended the Wagner Act in 1947 by enactment of the Taft-Hartley Act, it added a proviso to Section 9(b), stating in pertinent part:

> The Board shall . . . not . . . (2) decide that any craft unit is inappropriate on . . . the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.

Though the legislative history indicates that this proviso grew out of congressional concern that the *American Can* doctrine unduly restricted the rights of craft employees to seek separate representation, it is equally clear that Congress did not intend to take away the Board's discretionary authority to find craft units to be inappropriate for collective-bargaining purposes if a review of *all* the facts, both *pro* and *con* severance, led to such result. Thus, as stated in *Senate Report No. 105 on S. 1126*, submitted by Senator Taft:

> Since the decison in the *American Can case* (13 NLRB 1252), where the Board refused to permit craft units to be "carved out" from a broader beginning unit already established, the Board, except under unusual circumstances, has virtually compelled skilled artisans to remain part of a comprehensive plant unit. The committee regards the application of this doctrine as inequitable. *Our bill still leaves to the Board discretion to review all the facts in determining the appropriate unit*, but it may not decide that any craft unit is inappropriate on the ground that a different unit has been established by a prior Board determination.[9] [Emphasis supplied.]

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[7] *American Can Company*, 13 NLRB 1252. See also *Pressed Steel Car Company, Inc.*, 69 NLRB 629.

[8] See for example *Bendix Aviation Corporation*, 39 NLRB 81; *Aluminum Company of America*, 42 NLRB 772; *General Electric Company (Lynn River Works and Everett Plant)*, 58 NLRB 57; *Remington Rand, Inc.*, 62 NLRB 1419; *United States Potash Company*, 63 NLRB 1379; *International Minerals and Chemical Corporation*, 71 NLRB 878; *Food Machinery Corporation*, 72 NLRB 483. Sometimes severance was denied because of bargaining history and other factors. See for example *Packard Motor Car Company*, 63 NLRB 317; *Tamiami Trail Tours, Inc.*, 74 NLRB 918.

[9] 1 Leg. Hist. 418 (1947). A statement by Senator Taft on the floor of the Senate is to the same effect: "In effect I think it [Section 9(b)(2)] gives greater power to the craft units to organize separately. It does not go the full way of giving them an absolute right in every case; it simply provides that the Board shall have discretion and shall not bind itself by previous decision, but that the subject shall always be open for further consideration. . . ." 93 Cong. Rec. 3950–52; 2 Leg. Hist. 1009 (1947).

This conclusion is further buttressed by the fact that the House bill provisions[10] making the granting of severance mandatory were rejected by Congress in favor of the present provision which, as Senator Taft described it above, requires the Board to exercise its "discretion to review all the facts."

Shortly after the enactment of Section 9(b)(2), the Board, in the *National Tube* case, dismissed a craft severance petition filed on behalf of a group of bricklayer craftsmen who were employed in the basic steel industry. After an exhaustive analysis of the section and its legislative history, the Board concluded that: "(1) the only restriction imposed by Section 9(b)(2) is that a prior Board determination cannot be the basis for denying separate representation to a craft group; (2) under the language of the statute there is nothing to bar the Board from considering either a prior determination or the bargaining history of a particular employer as a factor, even if not controlling, in determining the appropriateness of a proposed craft unit; (3) there is nothing in either statute or legislative history to preclude the Board from considering or giving such weight as it deems necessary to the factors of bargaining history in an industry, the basic nature of the duties performed by the craft employees in relation to those of the production employees, the integration of craft functions with the overall production processes of the employer, and many other circumstances upon which the Board has customarily based its determination as to the appropriateness or inappropriateness of a proposed unit." The bricklayer unit was there found to be inappropriate because of the existence of such a pattern and history of bargaining in the basic steel industry and because the functions of the craft bricklayers were intimately connected with the basic steel production process which was highly integrated in nature.[11] In subsequent cases,[12] the same grounds were relied upon for denying the formation of craft units in the wet milling, basic aluminum, and lumbering industries.

In the *American Potash* decision, the Board, in effect, reversed the *National Tube* decision as to both the proper construction of Section

[10] See H.R 3020, § 9 (f)(2), 1 Leg. Hist. 188–189 See also Hearings before the Senate Committee on S. 55, etc., 80th Cong. 1st Sess., pp. 1007, *et seq.* (1947), for a proposal by the president of the American Federation of Labor which would have made the establishment of craft units mandatory unless the craft employees rejected separate representation.

[11] This decision was basically an affirmation of earlier decisions in *Geneva Steel Company*, 57 NLRB 50 and 67 NLRB 1159; and *Tennessee Coal, Iron and Railroad Company*, 39 NLRB 617. Similarly, the *Corn Products Refining* decision reaffirmed an earlier decision involving the same company, reported at 60 NLRB 92 Thus, the doctrine known as the *National Tube* doctrine had its origin in decisions decided prior to the amendments. The doctrine applies to new plants as well as old plants in the industries involved, and precludes the initial establishment of craft units as well as the severance of such units. See *Kaiser Aluminum & Chemical Corp.*, 119 NLRB 695.

[12] See cases cited in footnote 5.

9(b)(2) and the propriety of denying craft severance on the basis of integrated production processes in an industry where the prevailing pattern of bargaining is industrial in character.

As to the first, the Board stated [107 NLRB at 1422, 1423]:

> . . . we find that the intent of Congress will best be effectuated by a finding, and we so find, that a craft group will be inappropriate for severance purposes in cases where a true craft group is sought and where, in addition, the union . . . is one which traditionally represents that craft.
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> All that we are considering here is whether true craft groups should have an opportunity to decide the issue for themselves. We conclude that we *must* afford them that choice in order to give effect to the statute. [Emphasis supplied.]

As to the second, the Board stated [107 NLRB at 1421–22]:

> . . . we feel that the right of separate representation should not be denied members of a craft group merely because they are employed in an industry which involves highly integrated production processes and in which the prevailing pattern of bargaining is industrial in character. We shall, therefore, not extend the practice of denying craft severance on an industrywide basis.

It is apparent that the decision in *American Potash* was predicated in substantial part on the view that Section 9(b)(2) virtually forecloses discretion and compels the Board to grant craft severance. This view represented an almost diametrically opposite construction of the statute from that adopted by the Board in *National Tube*. On the basis of what has already been indicated herein respecting the legislative history of the section, we believe the revised construction of the statute adopted in *American Potash* was erroneous, a belief apparently shared by the Court of Appeals for the Fourth Circuit:[13]

> The Board was right [in the *National Tube* decision], in reaching the conclusion that the addition of subsection 2 of § 9(b) created no ambiguity. An amended § 9(b) does not strip the Board of its original power and duty to decide in each case what bargaining unit is most appropriate . . . In effect it frees the Board from the domination of its past decisions and directs it to re-examine each case on its merits and leaves it free to select that unit which it deems best suited to accomplish the statutory purposes. . . . Congress clearly did not command the Board, as it could have done, to establish a craft bargaining unit whenever

[13] *N.L.R.B.* v. *Pittsburgh Plate Glass Co.*, 270 F.2d 167, 172–173.

requested by a qualified craft union, or relieve the Board of its duty to consider the interests of the plant unions and wishes of the employees who desire to bargain on a plantwide basis. The amended section expressly requires the Board to decide *in each case* what unit would be most appropriate to effectuate the overall purpose of the Act to preserve industrial peace.

Rejecting, as we do, the statutory interpretation on which the *American Potash* decision is premised, and recognizing that *American Potash* itself constituted a change in the applicable criteria, we now consider whether the tests laid down in the *American Potash* case nevertheless permit a satisfactory resolution of the issues posed in severance cases. We find that they do not. *American Potash* established two basic tests: (1) the employees involved must constitute a true craft or departmental group, and (2) the union seeking to carve out a craft or departmental unit must be one which has traditionally devoted itself to the special problems of the group involved. These tests do serve to identify and define those employee groups which normally have the necessary cohesiveness and special interests to distinguish them from the generality of production and maintenance employees, and place in the scales of judgment the interests of the craft employees. However, they do not consider the interests of the other employees and thus do not permit a weighing of the craft group against the competing interests favoring continuance of the established relationship. Thus, by confining consideration solely to the interests favoring severance, the *American Potash* tests preclude the Board from discharging its statutory responsibility to make its unit determinations on the basis of all relevant factors, including those factors which weigh against severance. In short, application of these mechanistic tests leads always to the conclusion that the interests of craft employees always prevail. It does this, moreover, without affording a voice in the decision to the other employees, whose unity of association is broken and whose collective strength is weakened by the success of the craft or departmental group in pressing its own special interests.

Furthermore, the *American Potash* decision makes arbitrary distinctions between industries by forbidding the application of the *National Tube* doctrine to other industries whose operations are as highly integrated, and whose plantwide bargaining patterns are as well established, as is the case in the so-called *National Tube* industries. In fact, the *American Potash* decision is inherently inconsistent in asserting that ". . . it is not the province of this Board to dictate the course and pattern of labor organization in our vast industrial complex," while, at the same time, establishing rules which have that very effect. Thus, *American Potash* clearly "dictate[s] the course

and pattern of labor organization" by establishing rigid qualifications for unions seeking craft units and by automatically precluding severance of all such units in *National Tube* industries.

It is patent, from the foregoing, that the *American Potash* tests do not effectuate the policies of the Act. We shall, therefore, no longer allow our inquiry to be limited by them. Rather, we shall, as the Board did prior to *American Potash*, broaden our inquiry to permit evaluation of all considerations relevant to an informed decision in this area. The following areas of inquiry are illustrative of those we deem relevant:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.[14]

2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the emloyer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.[15]

[14] We are not in disagreement with the emphasis the *American Potash* decision placed on the importance of limiting severance to true craft or traditional departmental groups, nor do we disagree with the admonitions contained in that decision as to the need for strict adherence to these requirements. Our dissatisfaction with the Board's existing policy in this area stems not only from the overriding importance given to a finding that a proposed unit is composed of such employees, but also to the loose definition of a true craft or traditional department which may be derived from the decisions directing severance elections pursuant to the *American Potash* decision

[15] With respect to this factor, we shall no longer require, as a *sine qua non* for severance, that the petitioning union qualify as a "traditional representative" in the *American Potash* sense The fact that a union may or may not have devoted itself to representing the special interests of a particular craft or traditional departmental group of employees is a factor which will be considered in making our unit determinations in this area.

In view of the nature of the issue posed by a petition for severance, the foregoing should not be taken as a hard and fast definition or an inclusive or exclusive listing of the various considerations involved in making unit determinations in this area. No doubt other factors worthy of consideration will appear in the course of litigation.[16] We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations. Our determinations will be made only after a weighing of all relevant factors on a case-by-case basis, and we will apply the same principles and standards to all industries.[17]

Turning to the facts of this case, we conclude that it will not effectuate the policies of the Act to permit the disruption of the production and maintenance unit by permitting Petitioner to "carve out" a unit of instrument mechanics. Our conclusion is predicated on the following considerations.

The Employer is engaged in the production of uranium metal. It is the only enterprise in the country which is engaged in all phases of such production. All of its finished product is sold to the Atomic Energy Commission. Continued stability in labor relations at such facilities is vital to our national defense.

The Employer produces uranium metal by means of a highly integrated continuous flow production system which the record herein shows is beyond doubt as highly integrated as are the production processes of the basic steel, basic aluminum, wet milling, and lumbering industries. The process itself is largely dependent upon the proper functioning of a wide variety of instrument controls which channel the raw materials through the closed-pipe system and regulate the speed of flow of the materials as well as the temperatures within different parts of the system. These controls are an integral part of the production system. The instrument mechanics' work on such controls is therefore intimately related to the production process itself. Indeed, in performing such work, they must do so in tandem

[16] We are in a period of industrial progress and change which so profoundly affect the product, process, operational technology, and organization of industry that a concomitant upheaval is reflected in the types and standards of skills, the working arrangements, job requirements, and community of interests of employees. Through modern technological development, a merging and overlapping of old crafts is taking place and new crafts are emerging. Highly skilled workers are, in some situations, required to devote those skills wholly to the production process itself, so that old departmental lines no longer reflect a homogeneous grouping of employees.

[17] To the extent that *American Potash* forecloses inquiry into all relevant factors, and to the extent that it limits consideration of the factors of industry bargaining history and integration of operations to cases arising in the so-called *National Tube* industries, it is overruled. To the extent that the decisions in *National Tube Company, supra, Permanente Metals Co., supra, Corn Products Refining Company, supra, Weyerhaeuser Timber Company, supra,* and decisions relying thereon, may be read as automatically foreclosing craft or departmental severance or the initial formation of such units in unorganized plants in the industries involved, they are hereby overruled.

with the operators of the controls to insure that the system continues to function while new controls are installed, and existing controls are calibrated, maintained, and repaired.

The instrument mechanics have been represented as part of a production and maintenance unit for the last 25 years. The record does not demonstrate that their interests have been neglected by their bargaining representative. In fact, the record shows that their pay rates are comparable to those received by the skilled electricians who are currently represented by the Petitioner, and that such rates are among the highest in the plant. The instrument mechanics have their own seniority system for purposes of transfer, layoff, and recall. Viewing this long lack of concern for maintaining and preserving a separate group identity for bargaining purposes, together with the fact that Petitioner has not traditionally represented the instrument mechanic craft, we find that the interests served by maintenance of stability in the existing bargaining unit of approximately 280 production and maintenance employees outweigh the interests served by affording the 12 instrument mechanics an opportunity to change their mode of representation.

We conclude that the foregoing circumstances present a compelling argument in support of the continued appropriateness of the existing production and maintenance unit for purposes of collective bargaining, and against the appropriateness of a separate unit of instrument mechanics. In reaching this conclusion, we have not overlooked the fact that the instrument mechanics do not constitute an identifiable group of skilled journeymen mechanics, similar to groups the Board heretofore has found entitled to severance from an overall unit. However, it appears that the separate community of interests which these employees enjoy by reason of their skills and training has been largely submerged in the broader community of interests which they share with other employees by reason of long and uninterrupted association in the existing bargaining unit, the high degree of integration of the employer's production processes, and the intimate connection of the work of these employees with the actual uranium metal-making process itself.[18] We find, accordingly, that

[18] Nor have we overlooked the fact that the Employer's powerhouse employees and electricians have been permitted to sever themselves from the existing unit. However, in directing a severance election for the powerhouse employees, the Board noted that these employees worked in locations segregated from work locations of other employees, and that the powerhouse employees had virtually no daily contact with other employees See 76 NLRB 1055. We do not regard our decision in the instant case as being necessarily inconsistent with this previous action of the Board. In directing a severance election for electricians, a majority of the participating Board Members expressly refused to consider the effect or weight to be given to the integrated nature of the Employer's operations or to the existence of an industrial pattern of bargaining in the "chemical" industry. See 129 NLRB 312. For reasons already noted, we can give no precedential weight to this decision.

the unit sought by the Petitioner is inappropriate for the purposes of collective bargaining. We shall, therefore, dismiss the petition.

[The Board dismissed the petition.]

MEMBER FANNING, dissenting:

Although I join my colleagues in reviewing and revising the Board's craft severance policies,[19] I find myself in disagreement with them as to the circumstances in which it will effectuate the policies of the Act to deny skilled craft employees the opportunity to break away from industrial units in order to protect their special interests through separate representation. I deem it desirable to set forth with some particularity the considerations which will henceforth guide me in making unit determinations in severance cases.

First, however, I wish to stress my rejection of the plain implication in the majority opinion that the *American Potash* doctrine necessarily precludes the Board from exercising its statutory responsibility to make informed determinations as to whether employees in a proposed craft unit may constitute an appropriate bargaining unit in a particular case. As I view the true craft and traditional representative tests set forth in *American Potash*, they were intended to ensure that employees belonging to certain crafts, trades, or occupations, with a tradition of separate organization, may adhere to that tradition notwithstanding their past inclusion in a broader unit, where they seek representation by a union which has traditionally devoted itself to representing the interests of such employes. In short, I have always viewed the *American Potash* doctrine as an attempt to protect the legitimate interests of skilled as well as industrial employees and the craft and industrial unions which traditionally represent such employees. It would seem initially that this object could be accomplished through the application of relatively easily administered tests which are premised on the recognized fact that skilled employees share a community of interests deriving from their special skills, training, and functions which may be separate and distinct from the community of interests of less skilled employees.

Administrative simplicity does not, however, justify decision by rote, and to the extent that the *American Potash* doctrine may appear to be based on a conclusion that Section 9(b) and the second proviso thereto compel the Board to grant craft severance in all cases,[20] it has a tendency to dilute the force of considerations weighing against severance. This tendency is strengthened by the strictures against extension of the *National Tube* doctrine to industries with integrated production processes and patterns of employee representation com-

[19] See my concurrence in *Mallinckrodt Chemical Works, Uranium Division*, 129 NLRB 312, 315, footnote 3 (1960).

[20] *N.L.R.B. v. Pittsburgh Plate Glass Co.*, 270 F.2d 167, 172 (C.A. 4).

parable to those existing in the four "favored" industries. I am satisfied, therefore, that a restatement of our policy is indicated at this time.

Section 9(b) of the Act directs the Board to make its unit determinations on a case-by-case basis and lists craft units as well as plant units as being presumptively appropriate for purposes of collective bargaining. In 1947, Congress enacted a proviso to Section 9(b) which declared

> *Provided*, That the Board shall not . . . (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation . . . .

I think it manifest from the language of Section 9(b) and the proviso under consideration that Congress did not enact into law the requirement that craft employees always be given an opportunity to vote for separate representation. It is also apparent, however, that the wording of the proviso did not in any way dilute the strength of the presumption running in favor of the appropriateness of craft units, whether that issue is presented in a severance case or in one involving the initial organization of the employees involved. In these circumstances, and as craft units are but one of the kinds of units listed in Section 9(b), I deem it appropriate to go to the legislative history of the proviso to ascertain the congressional intention embodied therein. My study of such history convinces me that, although Congress rejected the concept that craft employees have the absolute right to bargain separately, Congress also intended to strengthen and protect the right of craft employees to organize on a separate basis, notwithstanding their inclusion in a broader unit. Senator Taft, speaking on the Senate floor during the debate on the bill, could not have been more explicit:

> In the third place *we have provided further protection for craft unions*. Today the situation is that when a new plant is organized the Board ordinarily permits the craft members of that plant to vote as to whether they will have a special craft union or join a general plant union. The Board has followed the desires of the craft unit on that question. But if at the time of the first certification a craft unit is not organized, or if no action is taken, and if by default they are all included in a plant union which is certified to the Board, the Board has taken the position that after 1 year of such bargaining no craft union will be recognized or given an opportunity to be heard in connection with establishing a craft unit. [Emphasis supplied.]

> All this bill does is to provide that such a previous finding shall not have that effect, and that *if a year later the craft people want to form a separate union they shall have the same consideration at that time as they would have had if they had taken that action when the plant was first organized. In effect I think it gives greater power to the craft units to organize separately.* It does not go to the full way of giving them an absolute right in every case; it simply provides that the Board shall have discretion and shall not bind itself by previous decision; but that the subject shall always be open for further consideration by the Board. [Emphasis supplied.] [21]

The Senate Report on the bill is to the same effect:

> . . . Generally speaking, in plants which have not been organized the Board has provided for craftsmen to vote in a separate unit and thus secure representation of their own if the vote reflects that desire (*Globe Machine and Stamping Company*, 3 NLRB 294). Where a company has already been organized, however, the Board does not apply this doctrine unless it is consistent with prior bargaining history. Since the decision in the *American Can* case (13 NLRB 1252), where the Board refused to permit craft units to be "carved out" from a broader bargaining unit already established, the Board, except under unusual circumstances, has virtually compelled skilled artisans to remain part of a comprehensive plant unit. The committee regards the application of this doctrine as inequitable. Our bill still leaves to the Board discretion to review all the facts in determining the appropriate unit, but it may not decide that any craft unit is inappropriate on the ground that a different unit has been established by a prior Board determination.[22]

I conclude from the foregoing that Congress intended the Board to apply to all industries essentially the same principles in making unit determination in severance cases as it applies in nonseverance cases,[23] and that Congress rejected the *American Can* philosophy that the mere fact that craft employees had been included in a broader unit is a sufficient basis for determining that such employees could not constitute an appropriate bargaining unit, "unless a majority of the employees in the proposed craft unit vote against separate representation." Perhaps there are valid policy reasons for a different

[21] 93 Cong. Rec. 3950–52, 2 Leg. Hist. 1009 (1947).

[22] S.R. No. 105 on S. 1126, 1 Leg. Hist. 417–418 (1947).

[23] I therefore join my colleagues in modifying *American Potash* to the extent it may be read as foreclosing consideration of all relevant factors in cases arising outside the so-called *National Tube* industries, and in overruling the *National Tube* decision, and decisions relying thereon, to the extent that they may be read as automatically foreclosing separate craft or traditional departmental representation in the industries involved See footnote 17 of the majority opinion herein.

approach; if so, that judgment must be made by Congress, and not by this Board.

I believe that the effectuation of congressional intention in this area can best be achieved by placing upon the parties who would deny separate representation to craft employees, the burden of demonstrating that the separate community of interests normally possessed by craftsmen has become submerged in the larger community of interests of the employees in the broader unit.

For my part, I do not believe that such burden is met merely by a showing of a bargaining history on a broader basis, no matter how long it has endured. I believe there must be a showing that bargaining history has, because of the nature and quality of the representation afforded craft employees, contributed to a strengthening of their ties and interests with those of the other employees, or that the history and pattern of representation in the industry involved is one of plantwide, rather than craft or departmental representation. Although I believe that this latter factor may militate against craft representation in the industry, I shall, nevertheless, permit such separate representation where it is necessary to free a small group of skilled craftsmen from a bargaining structure in which, because of their minority position, their legitimate special interests have been subordinated to the interests of the majority of unskilled employees.

Similarly, I am not persuaded that the fact that craft employees work in close association with other employees in operating and maintaining a highly integrated production system necessarily destroys their right to seek representation in a separate unit. I recognize, however, that the separate identity of craft employees may be destroyed, or their separate community of interests submerged in the broader community interests shared by all employees in the plant, in particular circumstances. For example, where the exigencies of a particular integrated production system are such as to require of craft employees: direct participation in the production process itself; the repetitive performance of routine tasks at more or less fixed work stations along the assembly line or channel of flow; or the acquisition of special skills in addition to those acquired in the course of normal training and experience in their craft, in order to enable them to work on their employer's specialized equipment; I believe it fair to conclude that the equities weigh in favor of maintaining the existing pattern of representation.

In making unit determinations in this area, I shall continue to give careful consideration to evidence which derogates from a finding that employees are true craftsmen.[24] Additionally, I shall continue

[24] See for example *American Hard Rubber Company, a Division of Amerace Corporation,* 142 NLRB 988.

to consider a petitioning union's status as a traditional representative of the craft employees involved as a factor weighing in favor of severance. Finally, I shall give consideration to the attempts of the craft employees to maintain their separate identity despite their inclusion in a broader unit, including consideration of the past opportunities, if any, which have been afforded them to obtain such representation.

I shall endeavor to apply the foregoing policy in the conviction that Congress intended the Act to be administered in such a way as to foster collective bargaining on both a craft and industrial unit basis. I have no intention of encouraging a multiplicity of bargaining units and a corresponding fragmentation of bargaining relationships. Nor, on the other hand, do I intend to impose on industry and labor a requirement that collective bargaining invariably occur in the broadest possible unit suggested by the bargaining history of a particular company. I intend to apply the full scope of congressional policy as completely and accurately as I can with due regard to the needs and desires of the employees who are the intended beneficiaries of our statute, the necessities of effective collective bargaining, including the needs of management and unions, and the requirements of national interest.

Turning to the facts of this case, I find that the Employer and the Intervenor have not met the burden of proving that instrument mechanics should be denied the opportunity to obtain separate representation by Petitioner. Thus, the record demonstrates, in the words of the majority opinion, that:

> . . . the instrument mechanics are skilled workmen who work under separate supervision and we find that the instrument mechanics constitute an identifiable group of skilled employees similar to groups we have previously found to be journeymen or craft instrument mechanics.

This conclusion is fully warranted by the record herein. Thus, like the electricians whose unit is found appropriate in the companion *Dupont* case, 162 NLRB 413, issued this date, the instrument mechanics are separately supervised and work from a shop separate from other departments at the Employer's premises. They report to this shop at the start of their workday and return there at the end of the day. The instrument mechanics have their own, highly specialized equipment, and their work tasks require the exercise of the traditional skills of the instrument mechanic craft. Although almost 75 percent of the repairs performed by the instrument mechanics occur on the production line, and though their work is intimately related to the successful operation of the Employer's uranium production process, the job requirements of the instrument mechanics

and production operators "are clearly defined and do not overlap." Nor can it be found that the nature and extent of the instrument mechanics' duties in the production areas negate their craft status, for in *DuPont*, over 90 percent of the electricians' working time is spent in production areas in coordination with the tasks of production operators.

The record thus reveals that the Employer's instrument mechanics constitute a functionally distinct group of skilled craftsmen who have never been afforded an opportunity to decide for themselves whether they wish to be represented for collective-bargaining purposes in a separate unit by a union which, in their opinion, will better represent their separate interests as craft employees. Nevertheless, this opportunity is foreclosed by the majority on three grounds: (1) the need for stability in labor relations at the Employer's facility which can be assured only by a continuance of the present pattern of bargaining on a production and maintenance unit basis; (2) the intimate relationship of the work of the instrument mechanics with the highly integrated production process; and (3) a 25-year bargaining history on a production and maintenance basis which has included the instrument mechanics. I am not persuaded that these reasons, objectively viewed within the full context of this case, justify a refusal to grant the craft unit election sought by the Petitioner.

The record will not support the claim that maintenance of stability in the Employer's labor relations depends on the continued inclusion of the instrument mechanics in the production and maintenance unit. The pattern of representation at this plant is *not* one based solely on production and maintenance unit bargaining. Separate units for licensed stationary engineers,[25] powerhouse employees,[26] and electricians[27] have been severed from the overall unit, and, whether or not the majority chooses to regard the decisions establishing such separate units as binding precedent, it cannot gainsay the fact that the pattern of representation at the Employer's plant is one of multiunit rather than single-unit bargaining. There is no evidence in the record that such multiunit bargaining has been productive of instability in the Employer's labor relations, or that, generally, craft representation is an unstabilizing and disruptive force in labor relations.[28]

Nor do I believe that the appropriateness of a separate unit of instrument mechanics is negated by the degree of integration of the Employer's production processes and the intimate connection of the

[25] *Mallinckrodt Chemical Works*, 67 NLRB 1147.
[26] *Mallinckrodt Chemical Works*, 76 NLRB 1055.
[27] *Mallinckrodt Chemical Works*, 129 NLRB 312.
[28] See Jones, Self-Determination and Labor Relations, 58 Mich. L Rev., 313, 335–336 (1966) for the view that craft representation is a stabilizing factor in industrial relations.

work of these employees with actual uranium metal-making process, particularly when this decision is viewed together with the companion *DuPont* decision. Here, the majority finds that there has been a sufficient blending of the functions of instrument mechanics and production employees to destroy any separate identity or community of interests of the former. But the degree of operational and functional integration in *DuPont* is at least as great as in the instant case. Yet, in *DuPont*, the majority rejects the Employer's contention that the operational and functional integration at its plant has so blended the interests of the electricians with those of the other maintenance and production employees that only an overall unit is appropriate, stating:

> Integration of a manufacturing process is a factor to be considered in unit determinations. But it is not in and of itself sufficient to preclude the formation of a separate craft bargaining unit, unless it results in such a fusion of functions, skills, and working conditions between those in the asserted craft group and others outside it as to obliterate any meaningful lines of separate craft identity.[29]

Finding "no such merger of functions, skills, and working conditions as to erase such craft identity," the craft unit is there found to be appropriate for purposes of collective bargaining.

If the majority's conclusion in the *DuPont* case is sound, and I believe it is, it cannot in logic rely on the integration of operations at the instant plant as a basis for finding that the instrument mechanics have lost their separate community of interest. In any event, this record fails to demonstrate that the integrated nature of the Employer's production processes has resulted either in the direct utilization of the instrument mechanics in the production process, or in the utilization of these employees' skills in routine and repetitive work at fixed stations on the channel of flow; nor has it been shown that the instrument mechanics required additional training beyond that normally required of craft instrument mechanics in order to enable them to work on the various instruments and controls which regulate the flow of raw materials through the production processes. In view of these circumstances, and in view of the absence of evidence demonstrating that the integrated nature of the Employer's operations has made collective bargaining on the present multiunit basis unworkable, I cannot agree with my colleagues that integration of the Employer's operations is a factor weighing against the appropriateness of the instrument mechanics' unit in this case.

[29] *DuPont, supra.*

Finally, I do not view the 25-year bargaining history for the production and maintenance unit as supporting the finding that a separate unit of instrument mechanics is inappropriate. Examination of that history reveals, as already noted, that other units have been severed therefrom without noticeable loss in the collective strength of the production and maintenance employees, and I venture the opinion that the severance of these 12 instrument mechanics would not weaken the capability of the 280 production and maintenance employees to bargain effectively in the future. Moreover, there is no indication in this record that the inclusion of the instrument mechanics in the larger unit has resulted in a loss of separate identity; indeed, the very factors cited by the majority for their conclusion that the needs of the instrument mechanics have not been neglected by the Intervenor also indicate that the Employer and the Intervenor continue to recognize their separate identity and special interests. Accordingly, in the absence of evidence compelling the conclusion that the instrument mechanics do not, as craftsmen, share a community of interests separate and distinct from the community of interests they share with other employees in the existing production and maintenance unit, I believe this is a situation in which Section 9(b)(2) contemplates that a craft unit cannot be found to be inappropriate unless the employees in the proposed unit vote against separate representation. I therefore, dissent from my colleagues' refusal to direct the election as requested by the Petitioner.

Holmberg, Inc.[1] ***and*** **Tool-Die and Moldmakers Guild, Independent, Petitioner.** *Case 29-RC-209. December 28, 1966*

DECISION AND ORDER

On October 19, 1965, the Regional Director for Region 29 issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, in accordance with Section 102.67(c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Intervenor, Local 1614, International Brotherhood of Electrical Workers, AFL-CIO, herein called the First Intervenor, filed timely requests for review of the Regional Director's Decision and Direction of Election on the grounds that the decision was clearly erroneous, that the Hearing Officer committed prejudicial error in quashing the Employer's subpena seeking the production of Petitioner's bargaining agreements, and that there were

[1] The names of the parties appear as amended at the hearing.