

Burns and Roe Services Corporation and International Union of Operating Engineers, Local 99-99A-99C, AFL-CIO, Petitioner and International Brotherhood of Electrical Workers, Local Union No. 26, Petitioner. Cases 5-RC-13958 and 5-RC-13952

May 26, 1994

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On December 10, 1993, the Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found inappropriate both the unit of electrical department employees (including electricians, electronic mechanics, and general maintenance workers) sought in Case 5-RC-13958, and the unit of stationary engineers, surveillance operators, heating, refrigeration, and air-conditioning mechanics, plumbers/painters, plumbers, carpenters, laborers, shipping and receiving clerks, and warehouse employees sought in Case 5-RC-13952. The Regional Director instead directed an election in an overall unit consisting of all of the above-mentioned employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Petitioner International Brotherhood of Electrical Workers, Local Union No. 26 (Local 26) filed a timely request for review of the Regional Director's Decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record,¹ we have decided to grant Local 26's request for review and reverse the Regional Director's Decision. For the reasons set forth below, we conclude, contrary to the Regional Director, that the petitioned-for unit of electrical department employees constitutes an appropriate craft unit for purposes of collective bargaining.

The Employer is a contractor providing facility maintenance services at various locations across the United States. The facility involved here, the National Archives building located in College Park, Maryland, houses documents for the National Archives. Because of the nature of the documents housed at this facility, strict environmental controls must be maintained. The Employer is responsible for maintaining the environmental and ventilation systems, as well as for operating the building's mechanical systems. As indicated above, Local 26 seeks to represent a unit composed of the Employer's electrical employees, while Local 99

seeks to represent a unit composed of the remaining mechanical and maintenance employees. The Employer argues that only a unit composed of all its electrical, mechanical, and maintenance employees is appropriate.

The employees are organized into four separate groups, each supervised by a separate coordinator:² the electrical group; the mechanical group;³ the structural coordination group;⁴ and the supply group.⁵ The coordinators assign work, handle the employees' timecards, conduct weekly meetings among employees in their group, and evaluate and discipline employees. All employees receive the same fringe benefits and holidays, and are subject to the same personnel policies. With respect to wages, electricians, engineers, and mechanics receive \$16.45 per hour; painters and carpenters receive \$15.64 per hour; shipping and receiving employees receive \$10.94 per hour; general maintenance employees receive \$9.96 per hour; and surveillance operators receive \$6.23 per hour.

The mechanical and structural employees repair and maintain the building's mechanical systems. Electrical employees are responsible for maintaining and repairing the electrical systems, lighting, and elevators. The electrical group consists of four electricians, two electronic mechanics, and three general maintenance workers. All four electricians have undergone formalized apprenticeship programs and are licensed journeymen electricians; the electronic mechanics have experience in electrical systems but are not licensed; and the general maintenance workers are likened to apprentices and usually work with the electricians. Electrical employees do not share the same break and lunch time as the other employees. There have been no transfers, either temporary or permanent, into or out of the electrical group.

Maintenance employees (except the general maintenance workers in the electrical department) are hired because of their varied skills, and perform a variety of tasks. All employees receive training from the manufacturers in using various pieces of equipment such as a new "lift." The Employer also provides training in subjects such as "confined spaces," which is mandated by OSHA. There is no evidence that the Employer conducts training classes on specific craft skills, that electrical employees receive substantive training regarding the performance of nonelectrical tasks, or that nonelectrical department employees receive substantive training concerning electrical tasks.

² The parties stipulated that these coordinators are statutory supervisors.

³ The mechanical group includes stationary engineers, surveillance operators, HVAC (heating, ventilation, and air-conditioning) mechanics, and plumbers.

⁴ The structural coordination group includes carpenters, laborers, and painters.

⁵ The supply group includes shipping and receiving employees and warehouse employees.

¹ See the National Labor Relations Board's Rules and Regulations, Sec. 102.67(d) (the Board may, in its discretion, examine the record in evaluating the request for review).

Employees generally work with employees in their assigned groups. Even when the Employer assembles a team of employees for a particular task, electrical employees generally perform the electrical work while mechanical/structural employees perform the structural and mechanical work. Electrical employees do not perform nonelectrical work. With respect to other cross-over work, the Employer claims that nonelectrical employees regularly perform electrical work. The record establishes that in performing preventive maintenance and alteration of office stations, nonelectrical maintenance engineers do some electrical work, as well as mechanical work, as these tasks incorporate both electrical and mechanical work. For example, mechanical employees perform preventative maintenance on the airhandler equipment, which requires them to repair and monitor the electrical system, and the HVAC mechanic does both electrical and mechanical work on the HVAC system. However, if the HVAC mechanic encounters an electrical problem that requires more than a short time to do the work, the HVAC mechanic writes a service order and an electrical department employee will perform that work. Brad Kennedy, the Employer's project manager, testified that he could not remember any instance when someone other than an electrician got involved in anything like wiring or installing electrical fixtures, and that he had no knowledge of any mechanical equipment needing electrical repairs that was repaired by a nonelectrical department employee.

On two occasions, a stationary engineer performed what appeared to be more complex electrical work. Both instances involved emergency situations occurring in the middle of the night when the stationary engineer was responsible for the facility. In the first instance, a storm knocked out all of power at the facility. The stationary engineer "threw the switches on" to draw power from another substation, and then the oncall electrician was called in to "assess the situation." In the second instance, an air compressor motor failed at the facility. According to the Employer, the stationary engineer was able to "jury rig" the equipment to keep it running. The oncall electrician was not called in; the stationary engineer merely waited 3 hours for the electricians to begin their shift.

Finally, there is no bargaining history at this facility, although at the Employer's Department of Agriculture jobsite, Local 26 represents a unit of electrical employees and Local 99 represents all other maintenance employees. In the 4 years that the Employer has had contracts with the Unions covering maintenance employees at that jobsite, there have been no jurisdictional disputes or contractual grievances involving work assignments.

A craft unit is one consisting of a distinct and homogeneous group of skilled journeymen craftsmen,

who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment.⁶ In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.⁷

We find, contrary to the Regional Director, that the electrical employees employed by the Employer at the National Archives' College Park facility constitute a distinct and homogeneous craft unit. The electrical employees organizationally are in a separate department, are separately supervised, are highly skilled and/or licensed journeymen craftsmen (or apprentices), and perform work typically performed by members of their craft, i.e., they have primary responsibility for the maintenance and repair of the electrical systems, elevators, and lighting. Contrary to the Regional Director's, the fact that the Employer does not have a formal apprenticeship program or conduct extensive on-the-job training does not necessarily negate separate craft status, as the Employer requires that the electrical employees at the very least have extensive experience and no other class of employees is required to have the same level of electrical knowledge.⁸

Further, the Employer does not disregard craft distinctions in making work assignments and does not assign employees solely according to need.⁹ On occasion, when a particular job requires a mix of skills, the Employer may assemble a team of employees; however, even in those situations, electricians principally work on the electrical systems while nonelectrical em-

⁶ *Phoenician*, 308 NLRB 826 (1992).

⁷ *NLRB v. Metal Container Corp.*, 660 F.2d 1309 (8th Cir. 1981); *Proctor & Gamble Paper Products Co.*, 251 NLRB 492 (1980); and *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954).

⁸ *NLRB v. Metal Container Corp.*, supra at 1314 fn. 9. There, the electricians had extensive training, experience, and other skills in addition to their electrical knowledge. The court noted that the lack of a formal apprenticeship or training program did not bar a craft determination where extensive experience was required and no other class of employees was required to have electrical knowledge. See also *Lianco Container Corp.*, 177 NLRB 907 (1969).

⁹ Compare *Longerier Co.*, 277 NLRB 570 (1985), in which the Board, in finding the petitioned-for employees constituted neither a craft unit nor a functionally distinct group of employees, emphasized that the employees were assigned to particular jobs according to need rather than by job classification or along craft lines.

ployees work on the mechanical systems. Moreover, the Employer neither trains nonelectrical employees to perform electrical work nor trains electrical employees to perform nonelectrical work.

In addition, there is only limited contact between the petitioned-for electrical employees and the non-electrical employees, because all employees normally work with their assigned groups and do not typically interchange with other employees, and because there have been no transfers into or out of the electrical group.¹⁰ Although different classifications of employees may have some contact when teams are assembled to work on a particular project, there was no evidence that this occurs on a frequent or regular basis.

We further find, contrary to the Regional Director, that the evidence regarding crossover work is not sufficient to negate the separate identity of the petitioned-for electrical department employees. Any electrical work performed by nonelectrical employees during preventative maintenance is limited primarily to lesser skilled tasks. If the preventative maintenance job requires more expertise, or is complicated, the non-electrical employees do not perform the work. Thus, despite some overlap of job functions, it appears that the majority of the nonelectrical employees do not have the expertise to perform the more complicated electrical work, and do not on a regular or routine basis perform work comparable to that performed by the electrical employees. The Board has found that some overlap of lesser skilled duties does not preclude finding the petitioned-for unit appropriate.¹¹

Further, the fact that a stationary engineer was able to restore electrical power at the facility during an emergency situation does not compel a finding that the petitioned-for unit is inappropriate. The Board has found that a strict separation between crafts is not required in order to find a separate craft unit appropriate. Integration of operations requiring some crossover between craft and noncraft employees, or between employees of different crafts, is permissible. See *E. I. Du Pont & Co.*, supra. Further, although a stationary engineer may, during emergencies, perform some of the functions normally performed by electrical employees, the Employer has not established that this occurs on a routine or regular basis; indeed, that a stationary engineer only performs such functions in emergency situations suggests that such occasions are rare and sporadic. Finally, stationary engineers appear to be the

only nonelectrical employees qualified to perform tasks beyond the least skilled electrical tasks. Thus, the evidence does not establish that nonelectrical employees routinely perform functions which are comparable to those performed by electrical employees, such as would tend to negate the separate identity of the petitioned-for electrical department employees.

Accordingly, in view of the high degree of skill and knowledge required of the majority of electrical department employees, including journeymen status; the separate supervision; the lack of contact with other employees; the lack of substantive cross-training; and the lack of evidence establishing that nonelectrical employees regularly or routinely perform similar work to that performed by electrical department employees, we find that the petitioned-for electrical department employees are a distinct and homogeneous group of skilled journeymen craftsmen along with their apprentices and helpers. In addition, as there is no labor organization seeking to represent the petitioned-for employees on a broader basis (indeed, Local 99 is seeking to represent a separate unit of the remaining maintenance employees, specifically excluding electrical department employees), we conclude that the petitioned-for unit is an appropriate craft unit for purposes of collective bargaining.¹²

We are not unmindful that there are some factors favoring finding only a combined unit appropriate, e.g., some contact and overlap of job functions, and that all employees are subject to common personnel policies and receive similar wages and benefits. However, a petitioned-for unit need only be an appropriate unit. Further, the Employer has not shown that the lines of separate craft identity have been so blurred as to preclude a separate electrical unit.¹³

¹² See *NLRB v. Metal Container Corp.*, supra. There, electricians were the only plant employees who could make major electrical repairs, had primary responsibility for electrical maintenance, were separately supervised, and were required to have extensive training or experience. In finding the petitioned-for unit of electricians appropriate, the court noted that the high degree of functional integration had not so fused the employees' functions, skills, and working conditions as to preclude a separate unit. See also *Atlantic Richfield Co.*, 231 NLRB 31 (1977), in which the Board found appropriate a separate unit of electrical instrument division employees.

¹³ Compare *Brown & Root, Inc.*, 258 NLRB 1002 (1981), in which the Board noted, inter alia, that the employer did not follow strict craft lines, assigned and utilized its employees according to need, and the evidence was insufficient to establish that the work of the requested employees was different from that performed by excluded employees. In *Proctor & Gamble Paper Products Co.*, supra, the petitioner sought to represent electrical support technicians. The Board, although noting that these employees were highly skilled, performed electrical work almost exclusively, were separately supervised, and spent considerable time in the shop, found that they did not constitute a separate craft unit because electrical work was performed by other technicians, the technicians functioned as a team, work done by the petitioned-for employees was performed in production areas, none of the technicians was licensed, there was no apprentice-

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¹⁰ We are mindful that the significance of the lack of transfers is diminished because the facility opened only recently, in October 1993.

¹¹ In *E. I. Du Pont & Co.*, 162 NLRB 413 (1966), the Board found appropriate a craft unit of electricians based on their apprenticeship training and their exercise of traditional craft skills, although some of their functions requiring lesser expertise were performed from time to time by other less skilled employees. See also *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978).

Accordingly, we conclude that separate units of electrical department employees and of other maintenance employees are appropriate units for purposes of collective bargaining.¹⁴ Consequently, we reverse the

ship program, and all technicians shared substantially the same benefits and working conditions.

¹⁴ We note that although the request for review did not directly address the appropriateness of the unit of mechanical maintenance employees sought by Local 99, as no party claims that there are any other employees who should be included in either unit, and as there is no union seeking to represent the petitioned-for employees on a

Regional Director's Decision and Direction of Election, and remand this case to the Regional Director for further action consistent with this Decision.

ORDER

The Regional Director's Decision and Direction of Election finding the petitioned-for units inappropriate is reversed, and the case is remanded to the Regional Director for further action consistent with this decision.

broader basis, we see no reason not to find this unit also appropriate for collective-bargaining purposes, and we do so find.