UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNISYS CORPORATION,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,	)	Case No. 7-RC-23167
	)	
Petitioner.	)	

UAW'S BRIEF IN SUPPORT OF REQUEST FOR REVIEW

The UAW's original Request for Review is attached, and it is incorporated herein. The UAW wishes to amplify one point.

This is a case involving a production and maintenance unit and a plant clerical unit. As explained in the original Request, the plant clerical unit dwindled to one active employee, and the Employer withdrew recognition. It has since opposed efforts to extend the production and maintenance unit to this employee, whether by agreement, accretion, or Board election.

The main distinctive factor in this case is the history of collective bargaining between the UAW and the Employer. While there have always formally been two bargaining units, the common interests of the employees have led to a convergence of the provisions of the collective bargaining agreements for those units. As spelled out in the Request for Review, many terms are identical, and many are almost identical.

The Employer's response to this argument is to focus on the fact that two units existed, without analyzing whether the employees contained in those units had a community of interest by virtue of the long bargaining history.

The Employer's focus misses the mark. The evidence in this case was that the employee in question had been the only active employee in his unit for a number of years. The evidence was also that the separate bargaining of the plant clerical contract was a *pro forma* affair and that this bargaining followed shortly after the agreement on the production and maintenance contract. Thus, the parties have actually bargained in the manner that they would if the clerical employee was added to the production and maintenance unit.

The community of interest and appropriate bargaining unit determinations are merely preludes to the exercise of the statutory rights guaranteed by Section 7. These determinations are meaningless by themselves. Thus, the fact that the parties have already bargained in the unit sought by the petition should carry great weight in this case. That weight is sufficient to justify holding the election sought by the Petitioner.

Respectfully submitted,

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Dated: June 18, 2008

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PETITIONER'S REQUEST FOR REVIEW

The Petitioner in this case, the International Union, UAW, and its Local 1313, hereby request review of a Regional Director's decision to dismiss an RC petition. This petition seeks to add a single, previously represented, plant clerical employee to an existing bargaining unit of production and maintenance employees. The employee in question was previously represented in a plant clerical bargaining unit at the same facility. The evidence established that the two units had bargained in parallel for many years, resulting in substantially similar terms and conditions of employment for both plant clerical and production and maintenance employees. It is the Petitioner's position that this history of bargaining created a distinctive community of interest and that the Regional Director therefore erroneously applied the rule normally used for "residual units;" to wit: that the election petition must seek all unrepresented employees of the same type in order to be appropriate. This case, therefore, is not covered by existing precedent and is worthy of review.

I. STATEMENT OF FACTS

The Employer maintains a facility in Plymouth, Michigan. One of the functions of this facility is to manufacture check processing machines and their repair parts. The facility has four buildings. The manufacturing takes place in Building 2. Building 1 is the "headquarters" and contains engineering, accounting, human resources and payment staff. Buildings 3 and 4 serve as warehouse. (Regional Director's Decision ("Director's Dec."), p. 3). There are shipping and receiving personnel at Buildings 2, 3, and 4. (Director's Dec., p. 9, p. 10).

Since the 1960's, the UAW has represented two bargaining units at the facility: one of production and maintenance employees and one of plant clerical employees. The production and maintenance workers have been represented by the UAW in Local 1313 since 1964. The recognition clause of that contract, Employer Exh. 10, includes: "all hourly rated production and maintenance employees . . . including hourly rated plant clerical employees, tool and die makers and related classifications, shipping and receiving, truck drivers, inspectors, quality control, job setters, leadmen, leaders, quality control technicians, and electronic technicians (manufacturing) . . . ." It excludes: "office clerical employees, professional, all other technical employees, guards, assistant guards, assistant foremen, foremen and all other Supervisors as defined by the Act . . . ."

Since 1967, the UAW has represented a group of plant clerical employees at the facility in UAW Local 1440. The recognition clause of that unit, Employer Exh.11, was for "all salaried plant clerical employees . . . located at 4110 Plymouth Road . . ." and excluded office clericals, supervisors, guards, professional employees, technical employees, confidential employees, managerial employees and employees covered by other collective bargaining agreements.

The testimony was that both units were established by NLRB elections.

In recent years, the number of job classifications in both units has decreased. In the 1994-1998 contract with Local 1313, Union Exh. 4, the bargaining unit was described as "hourly rated production employees . . . including hourly rated plant clerical employees, General Production and Electronic technicians (manufacturing)" and excluding office clerical employees, professionals, all other technical employees, guards and supervisors. The bargaining unit covering the members of Local 1440 was described by the 1994-1998 contract as including "all salaried plant clerical employees." Union Exh. 5. The contracts for Local 1313 were changed after 1998 to eliminate the reference to "plant clerical employees," Union Exhs. 1, 2; however, the contracts for Local 1440 continued to refer to "salaried plant clerical employees." Union Exh.3; Employer Exh. 4.[1]

In recent years, the plant clerical unit represented by Local 1440 dwindled down to a handful of employees. In the last several years, the unit consisted of just two employees: one active and one on long term disability. The employee on long term disability retired. The remaining employee in the unit was Gerald Sarna. As described more fully in the Regional Director's decision, Mr. Sarna is responsible for shipping repair parts to customers. He keeps track of incoming parts, is responsible for finding and shipping parts that are manufactured at the plant and arranges for vendors to directly ship parts to customers that use company printers. (Director's Dec., p. 7).

When the contract covering Mr. Sarna expired in 2007, the Employer withdrew recognition. In the letter withdrawing recognition, Employer Exh. 9, the Employer stated:

> As you know, for many years this bargaining unit has consisted of a single employees. There is an employee whose seniority has not been broken, but that individual has been laid off for years and has no

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1 As will be described below, the employee in question, Gerald Sarna, is paid on an hourly basis, notwithstanding the fact that he has always been covered by the contract with Local 1440.

> expectation of being recalled. Because the unit consists of only one employee, Unisys is advising you that it is withdrawing recognition from UAW Local 1440 . . . .

In response, the Union sought agreement to move the position in question into the production and maintenance unit. When the employer refused to agree, the Union then filed a unit clarification petition. The Employer objected to the use of the unit clarification petition procedure. Accordingly the Union filed the RC petition at issue in this case, which seeks to allow the employee in question, Gerald Sarna, the opportunity to vote to determine whether to be included in the existing production and maintenance unit.

The employer took the position that it was inappropriate to allow Mr. Sarna to decide whether he wanted union representation as part of the existing production and maintenance unit. As a consequence, a hearing was held. Following the hearing, the Regional Director dismissed the petition. This appeal ensued.

II. ARGUMENT

1. Long-established precedent holds that plant clerical employees are appropriately included in production and maintenance bargaining units. Armstrong Robber Co., 144 NLRB No. 104 (1963); Fisher Controls, 192 NLRB No. 66 (1971); Robbins & Meyers Inc., 144 NLRB No. 32 (1963). There can be no doubt that Mr. Sarna is properly classified as a plant clerical employee. The recognition clause of the contract covering Local 1440 specifically states that it is for plant clerical employees. And, the Regional Director's decision in this case specifically holds that Mr. Sarna is a plant clerical employee. (Director's Dec., p.13). Therefore, there can be no doubt that it is appropriate to include Mr. Sarna in the production and maintenance unit.

The NLRB looks at many factors in determining whether a proposed bargaining unit is appropriate, including the functional integration of the employees at the workplace, the interchange and contact of the employees, common terms and conditions of employment and the desires of the employees in question. These factors weigh in favor of allowing Mr. Sarna to vote on whether to be included in the production and maintenance unit. Consider:

- Much of Mr. Sarna's day is spent receiving incoming materials at the receiving dock for Building 2. Another substantial part of his day consists of retrieving and packing parts which are produced in the plant. (Director's Dec., p. 8, p. 10; Fisher-Smith, Tr. 130; Sarna, Tr. 266, 275). Thus, his work is functionally integrated with the work performed by the production and maintenance unit. (Fisher-Smith, Tr. 130; Sarna, Tr. 263).

- Mr. Sarna spends a good part of his day on the plant floor of Building 2 interacting and working with the employees in the Local 1313 bargaining unit. (Director's Dec., p.10; Sarna, Tr. 275).

- Mr. Sarna shares many of the terms and conditions of employment with the employees in the Local 1313 bargaining unit, including:

  (a) the same work schedule and unpaid lunch, (Director's Dec., p. 5, p.7; Bedy, Tr. 33, 55, 114; Fisher-Smith, Tr. 151);

  (b) working in the same building for the vast majority of the day, (Director's Dec., pp .7-8, 10);

  (c) the same pension plan, (Director's Dec., p. 6; Bedy, Tr. 89-90, 92);

  (d) the same salary range, (Director's Dec., p. 6; Bedy, Tr. 34, 84);

  (e) the fact that he is paid on an hourly basis, (Directors Dec., p. 6; Bedy, Tr. 84);

(f) the same medical plan, (Director's Dec., p. 6);

(g) the same employee savings plan and long-term disability plan, (Director's Dec., p. 6; Bedy, Tr. 92, 119).

- Also, Mr. Sarna clearly desires to be included in the Local 1313 unit, as evidenced by the petition in this case.

These facts, along with the history of bargaining and Mr. Sarna's status as a plant clerical employee, are surely sufficient to establish that Mr. Sarna shares a sufficient community of interest with the employees covered by the Local 1313 contract to be included in that contract.

2. The Regional Director nonetheless dismissed the petition because he believed that there were other plant clerical employees that should have been included in the petition in this case. This conclusion is wrong for two reasons.

First, it ignores the history of collective bargaining at this facility. This history reveals many key points.

One key point is that hourly plant clerical employees were actually included in the production and maintenance unit represented by Local 1313 for many years. They are included in the recognition clause of the first two Local 1313 contracts. Employer Exh. 10; Employer Exh. 12. The reference to hourly plant clerical employees in the recognition clause of the Local 1313 was not removed until the 1998-2002 contract, Union Exh. 2, undoubtedly due to the fact that all of the remaining plant clerical employees had come to be covered under the Local 1440 contract.

A second important point is that the units covered by the two contract had many similar, if not identical, terms and conditions of employment. A review of the two most recent contracts shows great similarity in the following provisions: Management Rights, Union Membership, Dues

Checkoff, No-Strike, No Lockout, Union Representation, Grievance Procedure, Seniority, Seniority for Shift Preference, Leaves of Absence, Working Hours, Notice of Overtime, Holiday Pay, Jury Duty Leave, Military Duty Leave, Bereavement Leave, Service Day Pay, Salary Administration, Bargaining Unit Work, Equal Application and Bulletin Boards. A review of the contracts since 1994 shows that the two units have received the same wage increases in each cycle, virtually the same Cost of Living Allowances, the same holidays and the same increase in Service Day benefits.

Third, the evidence was that the parties negotiated the Local 1440 contract in an abbreviated process in the last two contract cycles. In both those cycles, the International Union and the Employer first agreed to the contract for the production and maintenance unit. They then met a single time and basically adopted the economic improvements in the production and maintenance contract for the Local 1440 contract. The evidence fully supports the Regional Director's conclusion, therefore, that the terms and conditions of employment under Local 1440's contract historically were substantially similar to the ones in the Local 1313 contract. (Director's Dec., p. 4)

This history makes this case distinctive. Under Section 9(a) of the Act, the obligation of the NLRB is to define a bargaining unit that is appropriate for the purposes of collective bargaining. The parties have essentially already done that in this case. As set forth in Employer Exhibit 9, Mr. Sarna has been the only active employee covered by the Local 1440 contract for several years. Thus, the petition seeks to ratify a collective bargaining relationship that has existed over a prolonged period of time. Any fear that the interests of Mr. Sarna might be submerged by the interests of the employees already in Local 1313 is countered by the fact that Mr. Sarna wants to be in the larger unit and by the fact that Mr. Sarna will be able to choose whether or not he desires such representation. And, any fear that collective bargaining will be impeded by his addition to the production and

maintenance unit is countered by the practice over the last several years. The Employer introduced no evidence at the hearing that the collective bargaining over the single person covered by the Local 1440 contract undermined the efficient administration of the contract or any personnel policies. This history clearly indicates that the unit sought by the petition will be one that is consistent with the purposes of the Act.

Since the withdrawal of recognition, the Employer has proceeded to change Mr. Sarna's terms and conditions of employment to make them similar or identical to those of other unrepresented employees at the facility. This six month interlude, however, cannot eliminate the decades long community of interest built upon the bargaining of parallel contracts. More to the point, it cannot undermine the successful collective bargaining that has taken place in recent years when Mr. Sarna was the only active employee in the Local 1440 unit.

Any other conclusion would not be logical. Suppose this hearing had been held one day after the Employer had withdrawn recognition and changed the terms and conditions of employment of Mr. Sarna. Could anyone seriously argue that the new terms and conditions of employment were more significant than the ones that preceded them? Such an argument would give far too much weight to unilateral employer actions as opposed to the collective bargaining interests of employees under the Act. Such weight is especially inappropriate in this case because the record indicates that the Union and the Employer actually bargained in parallel for the single employee in question for several years.[2]

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2 Perhaps the Union could have filed an RC petition to merge the two units in the overlapping window period between the two contracts in this case. Had that been done, there would have been no question that Mr. Sarna's terms and conditions of employment, as defined by the contract, would have established a strong community of interest with the employees covered by the Local 1330 contract. The Union's failure to anticipate the Employer's decision to act

As stressed above, the reason for the analysis on the issue of "community of interest" is to determine whether the parties can successfully bargain. This purpose must be kept in mind when evaluating the mind-numbing details that make up the usual community of interest determination. The best evidence that the community of interest in this case is sufficient for successful collective bargaining is the history cited above.

The Regional Director acknowledged that the Board gives substantial weight to bargaining history. Relying on Wheeler Van Label Co. V. NLRB, 408 F.2d 613 (2nd Cir. 1969), however, he discounted the history in this case. Wheeler Van Label, though, is not analogous to this case at all. That case involved no bargaining history. Instead, it involved only a prior unit determination by the Board. Thus, it cannot control here.

The second reason for overturing the Regional Director's decision is that the evidence in this record is insufficient to establish that the other alleged plant clerical employees at the facility in question had a community interest with Mr. Sarna that was sufficient to justify dismissal of the petition in this case.

There was evidence on several other groups of employees that were also alleged to be plant clerical employees. This evidence, however, does not support the conclusion that a unit of these employees is the only one appropriate for an election.

After the withdrawal of recognition, Mr. Sarna was assigned a new job title: that of Production Control Assistant. There are five other Production Control Assistants that work in the four buildings at this facility. They do not work in the same building as Mr. Sarna. They do not have the same job duties. Nor was there evidence that these individuals had any contact and

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unilaterally should not be allowed to eviscerate Mr. Sarna's statutory rights.

interchange with the members of the production and maintenance unit or that their work was functionally integrated with the work of the production and maintenance unit. They all report to different supervisors. None were ever covered as plant clerical employees under the either the Local 1313 or the Local 1440 contract. And, Mr. Sarna has no interchange or contact with these employees. (Director's Dec., pp. 8, 11)

The witness produced by the Employer did not know the salaries of the other five Production Control Assistants. She did testify that the salaries of all employees classified as Production Control Assistants have the same "market reference point." (Bedy, Tr. 76-77). She also testified that the salaries of employees in the same title could vary depending on the employee's evaluation, the employee's history with the company and how much money was available in a particular year. (Bedy, Tr. 198, 199, 237). Thus, there is no way to know whether employees in the same classification have the same salary.

It is not an exaggeration to say that the only thing Mr. Sarna shares with the other Production Control Assistants is a job title and the minimal community of interest shared by every employee of the Employer at the Plymouth facility. This minimal community of interest cannot outweigh the community of interest he shares with the production and maintenance unit.

The Employer also adduced evidence regarding employees who are classified as analysts. These employees share cubicles with Mr. Sarna in the "Cube City" area of Building 2 of the facility and they perform some of Mr. Sarna's duties when he is on vacation or otherwise unavailable. Some of them report to the same supervisor as Mr. Sarna. The evidence was that a college degree was preferred for these analyst position. (Fisher -Smith, Tr. 156). They are paid on a salaried basis. (Bedy, Tr. 83; Fisher-Smith, Tr. 148). There was no evidence regarding what their salaries actually

were. (Fisher-Smith, Tr. 177). The analysts report to several different supervisors. There was no evidence on the interchange and contact the analysts had with the members of the production and maintenance unit. They have never been covered by the contract between the UAW and the Employer.

Given the requirement that a college degree is preferred, and given the fact that these employees were never covered under the plant clerical provisions of the two collective bargaining agreements, the conclusion is reasonable that the analysts are technical employees and that they should not be included in either a unit of production and maintenance employees or in a unit containing plant clerical employees. Robbins & Meyers, 144 NLRB No. 32 (1963)

The Employer also adduced some evidence regarding Shipping and Receiving employees that work in Buildings 3 and 4 of the facility. Mr. Sarna has a small amount of contact with the employees in Building 3 on a regular basis and they are supervised by the same supervisor as Mr. Sarna.

The Employer provided no evidence on the wages of these employees or on the process by which their wages were determined. Some are temporary, some are permanent. The Employer also provided no evidence to explain why these employees were not covered by the plant clerical provisions of the two collective bargaining agreements. It did not explain, for instance, why the Local 1313 covered Shipping and Receiving employees in Building 2, but not the other Shipping and Receiving employees in Buildings 3 or 4. There was also no evidence regarding the amount of contact and interchange between the production and maintenance employees and these Shipping and Receiving employees. Thus, while they are undoubtedly properly classified as plant clerical employees, it is clear that they have less community of interest with the production and maintenance

unit than Mr. Sarna does. The evidence is therefore insufficient to show that Mr. Sarna has a greater community of interest with these employees that the one in the production and maintenance unit.

III. CONCLUSION

For the reasons stated herein, the Request for review should be granted, the regional Director's decision vacated and an election directed in this case.

Respectfully submitted,

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Dated: March 13, 2008

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CERTIFICATE OF SERVICE

Stephen A. Yokich, an attorney, hereby certifies that he caused a true and accurate copy of the foregoing **UAW's Brief in Support of Request for Review** (with attached **Petitioner's Request for Review**) to be served upon the parties both by facsimile transmission to the phone number shown below and by depositing the same in the U.S. Mail, first-class postage pre-paid and addressed as shown below, on this 18th day of June, 2008.

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