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LABOR LAW — APPROPRIATE UNIT FOR COLLECTIVE BARGAINING—
SEVERANCE OF DEPARTMENTAL UNITS

Petitioning union, traditionally a craft organization, sought to sever from an existing production and maintenance unit a group of semi-skilled and unskilled employees, together with a group of craft employees, to form a departmental unit of the employer's forge die shop. *Held*, the rule established in the *American Potash and Chemical Corp.*¹ decision is controlling. Under that rule (1) the unit sought is appropriate for severance, and, (2) although petitioner is a craft union, it is not for that reason precluded from representing a severable unit of the employees in question on a departmental basis. *General Motors Corp., Chevrolet Muncie Division*, 114 N.L.R. B. No. 11 (1955).

The *American Potash* decision represents the National Labor Relation Board's most recent general recasting of its policy on craft and departmental severance. In that opinion, in addition to defining the rules henceforth to be applied in craft severance cases,² the Board also discussed the question of severance on a departmental basis. It recognized the equities of certain minority groups, which "though lacking the hallmarks of craft skills," are "functionally distinct departments" containing employees identified with "traditional trades or occupations" and which have acquired "craft-like³ characteristics."⁴ It recognized also that certain unions had traditionally concerned themselves with the special problems of such functionally distinct departments. Therefore, the Board ruled that it would allow severance of departmental units, but would "require strict proof that (1) the departmental group is functionally distinct and separate and (2) the petitioner is a union which has traditionally devoted itself to serving the special interests of the type of employees in question."⁵ The *American Potash* decision did not deal with a

1. 107 N.L.R.B. 1418 (1954).

2. For rules on craft severance, see *id.* at 1422-23.

3. The term "craft-like," as used by the Board in *American Potash and Chemical Corp.*, 107 N.L.R.B. 1418 (1953), and *Allis-Chalmers Corp.*, 77 N.L.R.B. 719 (1948), 14 NLRB ANN. REP. 33 (1949), refers to departments which may contain no true "craftsmen," measured by the Board in terms of the apprenticeable nature of the particular occupation, *American Potash and Chemical Corp.*, *supra*, Clayton and Lambert Mfg. Co., 111 N.L.R.B. 540 (1955), but which are made up of employees who are required to exercise certain specialized non-craft activities, such as truck driving, power house operation (see notes 8-10 *infra*), and which by custom have come to be recognized as distinct in relation to the remainder of the employer's operation.

4. 107 N.L.R.B. 1424 (1954).

5. *Ibid.*

new problem because for many years prior the Board had allowed severance on a departmental basis. However, such severance had usually been limited to two general types of cases. First, the Board had allowed departmental severance in the so-called "craft-nucleus" cases. Departments composed of both craft and non-craft employees, and therefore not constituting a "pure craft group," were permitted to sever "provided there was a sufficient nucleus of skilled-craftsmen and the group" performed a "specialized operation."⁶ In the second class of cases, severance was permitted to homogeneous groups with a common interest which, by custom or practice, had come to be regarded as "craft-like" even though the members did "not possess craft skills."⁷ No "craft-nucleus" was required. Severance under the latter rule was generally limited to such traditionally distinctive groups as powerhouse operators,⁸ truckdrivers,⁹ and foundry workers.¹⁰ On the other hand, severance under the "craft-nucleus" rule does not appear to have been necessarily limited to groups of traditional distinctiveness, the essential requirements being merely a "sufficient nucleus of skilled craftsmen" and a "specialized operation." The status of these older criteria, in light of the *American Potash* decision and a reconstituted Board,¹¹ was left in doubt. In outlining its new severance policies, the Board had used limited language, making reference only to groups which, "though lacking the hallmarks of craft skills," are "functionally distinct" with "craft-like" characteristics and had gone on to say that "the situations in which these circumstances exist are strictly limited in character."¹² Consequently, it might well have been speculated that this language spelled the quietus of "craft-nucleus" severance, for the Board seemed to have had reference to departments of the "traditionally distinct" variety. Such a conclusion was lent substance by the fact that in *American Potash* the Board was dealing with and allowed severance to a "traditionally distinct" unit of powerhouse workers.¹³

6. See 15 NLRB ANN. REP. 41-42 (1950) and cases cited therein; 16 NLRB ANN. REP. 89 (1951); see *Oregon Portland Cement Co.*, 92 N.L.R.B. 695 (1950).

7. See 15 NLRB ANN. REP. 41-42 (1950). In this report the Board clearly recognizes that the two situations are distinct. However, in earlier reports, the two types of cases appear to have been confused. 13 NLRB ANN. REP. 37, n. 7 (1948). In 1949, the distinction is more clearly stated, 14 NLRB ANN. REP. 33 (1949), and cases cited therein.

8. *Crocker, Burbank and Co.*, 80 N.L.R.B. 774 (1948).

9. *Caskey Baking Co.*, 80 N.L.R.B. 374 (1948).

10. *National Farm Machinery Cooperative, Inc.*, 88 N.L.R.B. 125 (1950).

11. The so-called "Eisenhower" Board.

12. 107 N.L.R.B. 1424 (1954).

13. *Id.* at 1425.

In the instant case the Board, in construing the *American Potash* rule, makes it apparent that departmental severance is possible on a far broader basis than "traditionally distinctiveness." It is made clear that departments formerly severable under the "craft-nucleus" rule continue to be severable under the *American Potash* policy, with the additional feature that a craft-nucleus is held to be merely a favorable circumstance, rather than a *sine qua non*, to severance. The effect of the case is to lend new significance to the departmental unit as a medium for severance of a smaller group from the established bargaining unit. The possibilities involved are well demonstrated in two companion cases,¹⁴ decided on the same day as the instant case, involving the same parties, similar departments in other divisions of the employer's organization, and essentially identical fact situations. In both cases, the Board applied its holdings in the instant case and, in one, allowed the petitioner, the certified representative of a unit of 66 craft employees in the employer's forge die shop, to extend its representation to a departmental unit by severing 280 semi-skilled and unskilled employees of the die shop from the production and maintenance unit represented by the intervening union. Thus, the Board ruled that a craft union presently representing a craft unit, is not for that reason precluded from severing the entire department in which its craft unit is located.

Apparently at the present time the only deterrent to unlimited severance of "functionally distinct" departmental units is the *American Potash* requirement, reiterated in the instant case, that the petitioner be a union "which has traditionally devoted itself to serving the interests of the employees in question."¹⁵ In the instant case, the Board did not make itself entirely clear on this point. In holding the petitioner qualified to represent the departmental unit sought, the Board found that the petitioner had "traditionally represented the shop employees either on a craft or departmental basis," and that "because the unit was sought by a union which has traditionally . . . represented such employees on a departmental basis" the unit was appropriate.¹⁶ This language raises the question of whether the

14. General Motors Corp., Oldsmobile Division, Forge Plant, Lansing, Mich., 114 N.L.R.B. No. 54 (1955); General Motors Corp., Chevrolet Forge Plant, Detroit, Mich., 114 N.L.R.B. No. 53 (1955).

15. 107 N.L.R.B. 1424 (1954).

16. 114 N.L.R.B. No. 11, pp. 3-4 (1955).

Board has ruled that a petitioning union *must* have represented the employees on a *departmental* basis in order to qualify to sever such a unit. Or may such union qualify by having previously represented craft employees of the type to be included in the departmental unit involved? If prior departmental representation is a prerequisite, the effect would be to limit the possibilities of future departmental severance. But, if the answer be that a union may qualify as well by having traditionally represented the department's skilled employees on a craft basis, the number of unions which may qualify to sever "functionally distinct" departments is vastly increased.¹⁷

Daniel J. Shea

SALES — REAL ESTATE BROKERS — DUTY TO CONVEY
OFFERS TO CLIENTS

Defendant real estate firm was employed as agent to sell certain property. Plaintiff made several offers for the property which were rejected by defendant but with the notation that an offer of \$9,500 would be acceptable. Although plaintiff thereafter submitted such an offer to defendant's salesman, the latter, instead of communicating it to the owner, misrepresented to him that another party's offer of \$9,250 had been the highest. As a result the property was sold for the lower offer. Plaintiff sued the real estate firm and its salesman for the difference between his offer of \$9,500 and the price of \$25,000 subsequently asked for the property by the successful purchaser. The district court sustained an exception of no cause of action on the theory that no duty was owed to plaintiff by defendants. On appeal, *held*, reversed. The statute regulating real estate brokerage imposed a duty on defendants to communicate plaintiff's offer of \$9,500 to the owner. *Amato v. Latter and Blum, Inc.*, 227 La. 537, 79 So.2d 873 (1955).

The question presented by the instant case, whether a real estate agent who has received an offer from a prospective purchaser owes a duty to the latter to submit the offer to his prin-

17. In *Friden Calculating Machine Co., and Marchant Calculators, Inc.*, 110 N.L.R.B. 1618 (1954), the Board held that in the case of a union newly organized for the specific purpose of representing the "craft" to be severed, the *American Potash* requirement that the union seeking to sever the craft unit have a history of representing the type of employees in question would not be applied. In all probability the same rule would apply in the case of departmental severance.