

CRAFT CERTIFICATION: NEW EXPANSION OF AN OLD CONCEPT

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I. INTRODUCTION

The many participants in the bargaining process, each seeking optimum gain, can acquire this gain only at the expense of each other or at the expense of the general public. Normally the gain of a bargaining unit is related to its ability to create meaningful disruption. The ability of a particular interest group to create such disruption depends, in part, on the composition of the individual bargaining unit.

The issue of craft severance presents to the decision maker, the National Labor Relations Board, the propriety of grouping a particular interest group, craftsmen, into an individual unit and thereby affording this group an independent power base. Apparently following the general belief that minimizing industrial strife serves the public interest, the Board favors aggregating workers into large industrial units which often combine different interest groups, both craft and noncraft workers.¹ Achieving industrial peace in this manner neglects other public interests in addition to those of the immediate participants in the bargaining process. This article contends that the present institutional grouping of workers may have a detrimental effect on both craft interests and on the economy as a whole and that this detrimental effect can be lessened if priority is placed on the severance of multicraft units.

It is not asserted that the Board should aggregate all craftsmen into multicraft units, a radical shift in policy which presently would be politically and institutionally impracticable. In the long-run, however, such a policy would be economically sound and institutionally feasible. The model for such a transition could be multicraft production and maintenance units. Such units are already recognized by the Board,² and all that is necessary is a restructuring of many such units now locked into larger industrial units. This restructuring can be effectuated by a liberalization of craft severance policies.³

How the Board responds to petitions by unions seeking to represent skilled workers can have serious consequences for employees, employers,

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¹ The Board does not usually articulate this motive, but it permeates practically all severance decisions and appears to be the most rational motive in others, *See, e.g.*, *S. D. Warren Co.*, 144 N.L.R.B. 204 (1963); *Hot Shoppes, Inc.*, 130 N.L.R.B. 138 (1961); *Hot Shoppes, Inc.*, 130 N.L.R.B. 144 (1961).

² *See Armstrong Cork* and its progeny described in detail in the discussion accompanying notes 61 to 86 *infra*.

³ Craftsmen may petition the Board for representation apart from their present representative (severance) or, if they are not presently represented, they may petition the Board for an election to decide the issue of representation.

and the public. A policy favoring the certification or severance of individual craft units can result in featherbedding, restrictive membership practices, jurisdictional conflicts between unions, atomization of the bargaining process, and a general breakdown of predictability in industrial relations.⁴ On the other hand, failure to satisfy the aspirations of skilled workers can lead to a scarcity of skilled workers and industrial unrest. In either case, the public suffers from decreased production and misuse of resources.

All participants in the bargaining process need continuity of production. However, at times one or another of them may pursue a strategy which disrupts production by engaging in a strike or lockout as a short-run means of promoting its long-run interests.

To maximize power for the desired disruption, craft workers would prefer to group in a bargaining unit which is capable of disrupting the entire production process.⁵ If they can achieve this grouping, they will be able to establish the widest wage and status distinctions between themselves and the semiskilled and unskilled workers. Because their wages will be a relatively small percentage of the total wage bill, they will be able to utilize this power successfully.

The industrial union must present a unified front to exert maximum economic power and, of course, it will want to include the craft employees in the industrial unit. To the extent that an industrial union is governed by majority rule, the craft minority is subject to the willingness of the industrial workers to preserve wage and status distinctions which satisfy the craft workers. Thus, industrial union leaders are unwilling to include provisions in the bargaining contract which particularly favor minority interests, if by doing so they jeopardize their positions with the majority of the union electorate.

The industrial employer's interest in the appropriate unit may vary with each case. Facing a unified front presents positive advantages: settlement will promote continuity of the production process and bargaining time will be diminished. On the other hand, the employer may prefer to bargain with many units; and if employee bargaining units are divided, he may gain a favorable balance of power. Also, a relationship with a craft union has some advantages, such as the use of craft hiring halls in securing skilled labor. Finally, the general public's interest will be served if industrial strife

⁴ But see Jones, *Self-Determination vs. Stability in Labor Relations*, 58 MICH. L. REV. 313 (1960). Professor Jones contends that the *extreme* industrial unrest predicted for the United States fostered by a liberal Board severance policy failed to materialize. For a more detailed discussion of his study see discussion accompanying notes 97 to 103 *infra*.

⁵ It may seem that the narrowest bargaining unit, the individual craft union, would be more in the interest of the individual craft. However, this is not necessarily the case. Industrial workers often will not honor the picket line of a striking craft group; and if the number of strikers is few, supervisors and replacements can replace them and effectively diminish their power base. However, if all the craftsmen in a particular field, such as maintenance, went on strike together, effective replacement becomes much less likely therefore affording the strikers a power base independent of the cooperation of the industrial workers.

is minimized and if enough workers are available to help fill the demand for various items at the lowest cost.

This entire set of interests—the craftsmen's in bargaining apart from the industrial workers, the industrial union's in maintaining the largest possible bargaining unit, the employer's in minimizing the number of contract negotiations or in enhancing his bargaining power, and the public's in wanting peace and production—must be considered by the Board in formulating the standards for deciding whether to grant a craft group's petition for recognition.

Before evaluating the various standards individually, it may be well to note some of the factors, apart from the act of severance or refusal to sever, that influence the treatment of craftsmen. Sometimes an industrial union or an employer may be willing to advance the standing of the craftsmen in order to prevent the industrial unrest which could be caused by dissatisfied craftsmen. Furthermore, because of their more developed skills and higher income, the craftsmen may be able to exert the influence that their voting power fails to provide. Thus, the presence of institutional safeguards within an industrial union can attest to the adequacy of the representation received by the craft group. The United Auto Workers, for example, gives its craft members a veto power over contracts negotiated by the national union with the auto industry.⁶ Furthermore, craftsmen may attain influential positions on important committees within an industrial union.⁷ Finally, the attitude of the Board towards craft severance directly influences the ability of the craftsmen to obtain leverage within an industrial union.

The Board has adopted various standards for guidance in the selection of competing claims to representation by craft and industrial unions. The Board's choice between the two, often competing policy goals of industrial stability and employee free choice of representation will determine which claim will be granted. The tension between these two policies was stated succinctly in *Buddy L. Corp.*:⁸

As we observed in *Mallinckrodt*, unit determination without regard to balancing the effect on industrial stability and resulting benefits of a historical plantwide bargaining unit against the wishes of a few members of the unit for separate representation could well lead to an instability in labor relations that could endanger the desirable goals that Congress sought to achieve and bring on the evils that it sought to avoid as set out in its policy declarations in the National Labor Relations Act. However, to deny separate representation where to do so advances the cause of stability little, if at all, might also carry the seeds of instability. We think

⁶ That such ratification power is effective is demonstrated by the continuance of a strike after 2000 industrial workers voted to accept the contract but 200 skilled workers refused to ratify it. *Lear Siegler, Inc. v. UAW*, 287 F. Supp. 692 (W.D. Mich. 1968).

⁷ For an excellent discussion of the power structure, containing examples from American industry, see Weber, *The Craft-Industrial Issue Revisited: A Study of Union Government*, 16 IND. & LAB. REL. REV. 381 (1963).

⁸ 167 N.L.R.B. 808 (1967).

that it might do so in the present situation, and, we also think that to deny separate representation in the present case would be contrary to the policies of the Act as it would deny employees the freedom of choice Congress considered as equally essential, in proper circumstances, to achieve the peace and stability necessary if our commerce is to flow without interruption.⁹

The necessity to strike a balance between industrial stability and employee free choice of representation has led the Board to a wide variety of solutions. Yet, the continuing dissatisfaction of skilled employees, which is sometimes exercised in ways that frustrate Board policy,¹⁰ and the continuing shortage of skilled workers indicate the need for a new approach to craft bargaining.

II. THE CERTIFICATION OF CRAFT GROUPS AS INDEPENDENT BARGAINING UNITS

Because of the political difficulties involved in developing precise rules, the inflexibility of such rules, and the changing strategies of the participants, Congress charged the Board with the duty of defining the appropriateness of a craft unit for collective bargaining.¹¹ Pursuant to its authority under § 9(b) of the National Labor Relations Act, the Board initially developed the *American Can* doctrine,¹² which refused to allow craft severance if there had been a history of bargaining on a broader basis. Congress rejected this approach by amending § 9(b) in 1947; but, the Board soon adopted a middle ground in *National Tube*.¹³ Then in 1954 the Board took a position closest to automatic severance,¹⁴ which was subsequently discarded in 1966 with the adoption of the *Mallinckrodt* functional approach.¹⁵ At the time, most critics predicted that application of the *Mallinckrodt* doctrine would result in a very restrictive severance policy; and history has proved their astuteness.¹⁶

⁹ *Id.* at 809-10.

¹⁰ See *Lear Siegler, Inc. v. UAW*, 287 F. Supp. 692 (W.D. Mich. 1968), where it was asserted that the veto power of the craftsmen permitted what the Board had forbidden, *i.e.*, a separate union.

¹¹ National Labor Relations Act § 9(b), Ch. 372, § 9(b), 49 Stat. 453 (1935), as amended 29 U.S.C. § 159(b) (1970).

¹² *American Can Co.*, 13 N.L.R.B. 1252 (1939).

¹³ *National Tube Co.*, 76 N.L.R.B. 1199 (1948). The Board rejected severance in four industries, but liberally allowed it in others.

¹⁴ *American Potash & Chem. Corp.*, 107 N.L.R.B. 1418 (1954). The *American Potash* doctrine allowed automatic severance if (1) the group seeking certification was a true craft group and (2) the union seeking to represent the craft group was one that traditionally represented that craft. *Id.* at 1422.

¹⁵ *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387 (1966).

¹⁶ By a memorandum of June 24, 1968, the Executive Secretary of the Board advised the Regions:

Since the Board's decision in *Mallinckrodt Chemical Works* which substantially changed the *American Potash* doctrine, the Board has issued a number of decisions strictly applying the standards established in *Mallinckrodt*. The thrust of all these cases indicates that the Board will not sever from an existing production and maintenance or

That the Board has demonstrated flexibility and a willingness to retreat from what it deems to be an unsatisfactory policy reflects both an awareness of the weaknesses of the various policies and the different attitudes toward craft severance by various Boards. Perhaps the only thing that can be gleaned from the relatively short and diversified history of Board severance policy is that the *Mallinckrodt* doctrine is not likely to enjoy a long life.

Although the Board has frequently changed its general policy towards severance, at the individual plant level it has consistently conditioned severance on both the characteristic of the skill and the appropriateness of the group for independent recognition. A petitioning group must first demonstrate that it is a craft and that the unit is appropriate.¹⁷ The critical characteristic of a craft has been consistently held to be an arduous training program.¹⁸ The tests of appropriateness, on the other hand, are more difficult to describe because of the varying weight the Board has given to such factors as the distinguishability of the unit,¹⁹ the extent of common supervision,²⁰ the degree of integration of the unit into the employer's production process,²¹ the experience of the petitioning union in representing the type of craft,²² and the history of collective bargaining in the plant and in the industry.²³

In addition to the above tests of unit appropriateness, there are two other standards, each of which possesses the virtues of simplicity and definiteness. One is to entirely refuse severance of craft groups as independent bargaining units.²⁴ The other, the most liberal policy the Board could adopt, is to grant automatic severance to a group once it has qualified as a craft. Neither of these approaches is satisfactory, however, for the former ignores the minority rights of a group having a legitimate claim to differentiation from the semiskilled and unskilled workers. Moreover, the suppression of that claim may not lead to the desired stability because, in the ex-

other overall unit any craft, department, or other subdivision of such unit except under very strong factual circumstances.

In the same memorandum the Regions were advised that most severance petitions could be dismissed without a hearing.

¹⁷ *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387, 397 (1966); *American Potash & Chem. Corp.*, 107 N.L.R.B. 1418, 1422 (1954).

¹⁸ *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387 (1966); *American Potash & Chem. Corp.*, 107 N.L.R.B. 1418, 1423 (1954).

¹⁹ *Paxton Wholesale Grocery Co.*, 123 N.L.R.B. 316 (1959).

²⁰ *Drug Fair-Community Drug Co.*, 162 N.L.R.B. 843 (1967); *Sparkle Mkts. Co.*, 113 N.L.R.B. 790 (1955).

²¹ *Goodyear Tire & Rubber Co.*, 165 N.L.R.B. 188 (1967); *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387, 397 (1966).

²² *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387, 397 (1966).

²³ *Mobile Oil Corp.*, 169 N.L.R.B. (1968); *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387, 397 (1966).

²⁴ Several Canadian labor relations Boards, the Ontario Labour Board, Alberta Board of Industrial Relations, New Brunswick Labour Relations Board, Quebec Labour Board, and the British Columbia Labour Relations Board, have adopted this policy. See E. HERMAN, DETERMINATION OF THE APPROPRIATE BARGAINING UNIT 53-66 (1966).

trème, craft groups that are unsuccessful in promoting their interests may conduct wildcat strikes and tie up production in order to force the employer to exert pressure on the industrial union to satisfy their demands. The latter approach is equally unsatisfactory because it exalts craft interests to the exclusion of those of the other employees, the employer, and the public. Also, the liberal recognition of single craft bargaining units may give craft unions the power to engage in practices which perhaps have led to the present anticraft bias, *e.g.*, featherbedding, restrictive membership,²⁵ "whip-sawing," and other socially wasteful practices. The Board has never completely refused to sever craft groups and at one time adopted a policy of liberal severance.²⁶ However, for many years the Board has been developing the previously mentioned standards, which chart a middle course between no severance and liberal severance.

Probably the least subjective standard used by the Board is the historical position of the petitioning craft group.²⁷ The elements to be satisfied in deciding whether a craft group is historically qualified for independent representation are that its members belong to a traditional craft and that they have been inadequately represented by the industrial union. Historical criteria to determine craft qualification are simple and definite. Precedential guidelines, established by custom and available to unions, employers, and the Board, can make the composition of a bargaining unit highly predictable. Such criteria, however, ignore the dynamics of the industrial world. For instance, technological change may produce workmen who are as well trained as the members of existing crafts but whose skills do not fall within traditional job descriptions. Conversely, technological change may reduce a "skill" to a routine job.²⁸ Moreover, if the Board

²⁵ Of course, industrial plants institute their own training programs and ostensibly restrictive membership practices should not develop from such programs. However, plant managers are not reluctant to hire trained craftsmen from other industries and, because the wage rate is held down by the inclusive policies of the Board, there is always the desire to leave the industrial plant after training and migrate to higher paying craft industries, for example, the construction industry. Conceivably this migration from the industrial plants could affect the balance of power. If striking industrial craft workers can find employment in other industries, management will be hard-pressed for bargaining leverage. On the other hand, if severance is liberally granted and the smaller units are able to raise their wages to a level that is competitive with outside craftsmen, the flow may be reversed because of the nonseasonal nature of industrial work. If this should occur, the restrictive membership practices of the outside crafts could be adopted by the industrial craft units.

For a generally unappreciated view see Foster, *Nonapprentice Sources of Training in Construction*, 93 MONTHLY LAB. REV. 21, 22 (Feb. 1970). The author makes a strong case based on a regional study in upstate New York that, for the most part, apprenticeship programs contribute a small percentage of the total journeymen.

²⁶ American Potash & Chem. Corp., 107 N.L.R.B. 1418 (1954).

²⁷ For a critical view of Board utilization of bargaining history see Abodeely, *NLRB Craft Severance Policies: Pre-eminence of the Bargaining History Factor after Mallinckrodt*, 11 B.C. IND. & COM. L. REV. 411 (1970).

²⁸ This need for a departure from past thinking of "traditional representative" was explicitly recognized in *Mallinckrodt Chemical Works*:

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 con-

relies on the adequacy of past representation, it loses objectivity because a historical evaluation of the adequacy of past treatment necessarily involves the Board's own concepts of employee equity and bargaining stability.²⁹

Another standard in determining the appropriateness of a craft bargaining unit and one which can have substantial influence on the Board is the inherent cohesiveness of the petitioning craft group. Employees who do related work under similar conditions are said to possess a common interest. The advantage in looking to the equality of treatment afforded workers in similar situations is that these employees have, to a large extent, the same needs. This standard has a substantial element of subjectivity, however, because any perfectly homogeneous grouping would have to be so limited as to be meaningless. The appropriate grouping thus depends upon the decision maker's value judgment as to how expansive the limits of the class should be.

A standard permitting the severance of a unit based on common supervision has some advantages. Because the group is supervised by a central decision maker, a single craft unit isolates difficulties in the bargaining process and also relates the problems of the craftsmen directly to the job they perform. Nonetheless, such a grouping is subject to at least two serious shortcomings. First, it makes no provision for craftsmen who, because of their training and responsibility, seek treatment different from the rest of the group. Second, since the level of supervision determines the membership of the bargaining unit, choosing that level becomes a value judgment with no defined criteria.³⁰

The functional integration standard overlaps the standards of common interest and common supervision. Nevertheless, the Board gives independent consideration to the degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production process is dependent upon the performance of the assigned

comitant 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.

Mallinckrodt Chem. Works, 162 N.L.R.B. 387, 398 n.16 (1966).

²⁹ Comments which appear objective, for example, that craftsmen are paid on a par with their counterparts in other plants or craftsmen are the highest paid workers in the plant, are subjective. The craftsmen in the other plant may be overpaid or underpaid depending on their bargaining power. The same may be true for the craftsmen in the plant. *See also* materials cited at notes 109 and 110 *infra*.

³⁰ Any of the decision making units is important to the group directly affected by the decision. Undoubtedly the size or level of the unit will in turn be affected by the nature of the problem. A minor problem, such as regulations concerning where the smoking breaks will be taken, can probably best be handled by the decision maker of a small unit, but problems of greater magnitude demand attention by a decision maker of a larger unit.

functions of the employees in the proposed unit.³¹ The elements which establish functional integration are not clear, but if the craft group is integrated into the production process so that its work is only an unidentifiable portion of the whole, severance may be denied. The purpose of functional integration as a standard is clear. Craftsmen who become a necessary component of the continuous production process can, if given power as a single group, inhibit the entire process with a small number of employees, whereas craft skills which are not integrated can in the short run be eliminated or replaced on a limited basis.³² The value of functional integration as a sole standard is questionable, however, because it places complete emphasis on one interest, continuity of production, to the detriment of what could be the legitimate interests of a minority group. On the other hand, disregarding this standard contributes to industrial friction in situations where there is close interaction between skilled and unskilled workers.

Each of these standards is adverse to the interests of the crafts. By relying only on the bargaining history of the craft itself or of the particular group petitioning for recognition, the Board cannot focus on the current dissatisfactions of the craftsmen. Regardless of how equitable the industrial union treats the craft group, if the craftsmen imagine that they can do better on their own, even if they can not, then their attitude will contribute to industrial friction.³³ Likewise, the standards of common interest, common supervision, and functional integration emphasize the objective characteristics of the petitioning group rather than the reasons for which its members desire independent recognition. Presently, the Board favors industrial units which embrace the craft employees.³⁴ Seldom will the various standards used in determining severance coincide and even more rarely will there be no factors present against severance. Since the Board has given no ordinal value to the individual standards utilized in its decisions, one is left with the feeling that consistent analysis is impossible. The less obvious factor, the need of the craftsmen, is generally left undiscussed.³⁵

³¹ *Pervel Indus. Inc.*, 163 N.L.R.B. 1037 (1967); *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387 (1966).

³² For example, maintenance can be sporadically performed by supervisors or a few replacements, but tool and dye makers must continually work on tools used in the ongoing production process; therefore, limited replacement is unlikely.

³³ In the extreme this dissatisfaction may cause craftsmen to exercise intraunit power to achieve safeguards which may be very disruptive, for example, veto power. See text accompanying notes 108 to 114 *infra*.

³⁴ For a survey of cases illustrative of present Board severance policy since *Mallinckrodt* see DuRoss, *Craft Severance and National Labor Policy—the Aftermath of Mallinckrodt*, 30 U. PITT. L. REV. 577 (1969).

³⁵ Aside from acting on purely economic considerations, the Board may be trying to preserve the upward job mobility of semiskilled workers within a production unit which includes both skilled and semiskilled workers. This policy was articulated in a recent decision, *Zia Co.*, CCH NLRB Dec. ¶ 20,605 (1969).

III. THE CONSEQUENCES OF PRESENT LABOR BOARD PRACTICES ON THE SUPPLY OF SKILLED LABOR

In the United States, where shortages of skilled labor due to relatively full employment may be chronic, employers have had extreme difficulty in finding qualified workers among the unemployed and have often turned to foreign countries seeking skilled employees.³⁶ Moreover, the problem of scarcity is not likely to disappear. A study by the United States Department of Labor predicted four million skilled jobs will have to be filled between 1965 and 1975 because of economic growth and worker attrition.³⁷ An important question, therefore, is whether the continuing failure to recognize independent craft bargaining units may ultimately produce a serious deficiency in the supply of skilled labor.³⁸

To the extent that craft employees can negotiate better contracts, the present Board practice favoring inclusive industrial units can lead to a decline in the relative wage and nonwage differences between craftsmen and other workers³⁹ and can cause a horizontal difference in skilled wages for the same job function depending on the bargaining unit. Moreover, a social need is filled when craftsmen aggregate themselves into a group and strive to distinguish themselves from the other employees.⁴⁰ Unions have, of course, always emphasized social fulfillment as a desirable side effect to counter the hard business of collective bargaining. Perhaps this is what the Board has in mind when it demands that a craft group seeking severance demonstrate that it has maintained its identity through time in the industrial unit.⁴¹

At the same time, in a society oriented to formal education, the prestige of the craftsmen and his potential for promotion are also diminishing; yet

³⁶ BUS. WEEK, Apr. 2, 1966, at 101. Because of the last two years of economic downturn there may develop a glut of skilled workers. If so, the suggested Board policy should not change. During such times there will be a diminution of apprenticeship programs, and when the economic upturn comes skilled workers will be more scarce than ever.

³⁷ Salt, *Estimated Need for Skilled Workers, 1965-1975*, 89 MONTHLY LAB. REV. 365 (1966).

³⁸ Chamberlain and Cullen recognize that the shrinking of the wage differential between skilled and unskilled workers can lead to a scarcity of skilled workers to an employer. They suggest that this scarcity can be eliminated by raising the relative wage rates of the skilled employees. N. CHAMBERLAIN AND D. CULLEN, *THE LABOR SECTOR* 426-429 (2d ed. 1971). The contention of this article is that an employer enjoys no such freedom of contract if the craftsmen are submerged within a predominately industrial unit.

³⁹ The tendency is for union negotiators to insist on uniform increases for different classifications. This practice, of course, diminishes the percentage differential between skilled and other workers. This practice changes when craftsmen acquire effective power within the unit. See A. GITLOW, *LABOR AND MANPOWER ECONOMICS* 219-220 (1971).

⁴⁰ Wage differentials also perform a social function. They help in determining social status within the work group. Although often there are characteristics of the job which make certain jobs more prestigious than others, the wage rates attaching to them in part symbolize and in part create the social distinction in the work group. N. CHAMBERLAIN AND D. CULLEN, *THE LABOR SECTOR* 296 (2d ed. 1971). See also Livernash, *Job Evaluation*, in *EMPLOYMENT AND WAGES IN THE UNITED STATES* 431 (Woytinsky & Assoc's. eds 1953).

⁴¹ Mallinckrodt Chem. Works, 162 N.L.R.B. 387, 397 (1966).

the personal sacrifices to acquire a craft skill remain great.⁴² Since an apprenticeship is a typical prerequisite to becoming a qualified craftsman, a worker must undergo an extensive training program to acquire specialized knowledge.⁴³ During his apprenticeship, one is likely to earn less than he could had he not chosen to become a craftsman but rather had gone directly into the labor force as a nonskilled worker. Future rewards in increased income or increased status are therefore necessary to encourage an employee to forego present income.⁴⁴ While wages are not the only factor in choosing an occupation,⁴⁵ they are a dominant consideration,⁴⁶ particularly in the United States where status is directly related to income. Moreover, the industrial environment has changed. The work of the nonskilled no longer excludes all labor but that with a pick or shovel. Since today a nonskilled employee works in an environment similar to his skilled counterpart, conditions of employment alone are not sufficient incentives to induce employees to enter a craft.

The studies available do not specifically attribute the decline in the differences between craft and noncraft employees to the submergence of craftsmen within large industrial units.⁴⁷ Nevertheless, it is possible that this structural grouping was a factor in the decline.⁴⁸

Robert Ozanne has concluded that:

- (1) unionization had a substantial effect on skill differentials (craft unions widening the differential and industrial unions narrowing the differential), and
- (2) skill differentials were influenced as much by internal pressures

⁴² "The narrowing wage gap between production workers and craftsmen reduced the incentive for young men to buckle down to the hard grind—and delayed earnings—of a long apprenticeship. Craftsmen lost status in college-oriented society." *BUS. WEEK*, Jan. 15, 1966, at 32.

⁴³ Prolonged apprenticeship programs may be a union device for restricting membership in hopes of gaining higher wages. Also, public education in the form of vocational high schools and technical institutes is providing skilled workers, generally with a much shorter training time than the traditional apprenticeship programs require. Nevertheless, some type of arduous training is recognized as a necessary prerequisite for a craft. *See note 15 supra*.

⁴⁴ A recent study by Wilkinson sheds some light on the relationship between the choosing of an occupation and the future promise of pecuniary reward. He demonstrates that the flow of trainees into one profession can be disrupted by a relative change in the present value of lifetime earnings of one profession with a comparable profession. Wilkinson, *Present Values of Lifetime Earnings for Different Occupations*, 74 *JOUR. POL. ECON.* 556 (1966).

⁴⁵ Rottenberg states that the money wage will be the determinant only when all other determinants are equal. Rottenberg, *On Choice In Labor Markets*, 9 *IND. & LAB. REL. REV.* 183 (1956).

⁴⁶ Chamberlain has pointed out that the differential constitutes a basis for social distinction. N. CHAMBERLAIN, *THE LABOR SECTOR* (1965).

⁴⁷ There is no general agreement about the cause of the trend. Morgan cites as a possible cause the coming to maturity of the industrial nations. C. MORGAN, *LABOR ECONOMICS* 120-121 (1962), *citing* W. GOLDNER, *LABOR MARKET FACTORS AND SKILL DIFFERENTIALS IN WAGE RATES* 8 (1958). Goldner has contended that unionism is neutral as a cause in the narrowing of the differential.

⁴⁸ Perhaps the decline in differentials would have been less if separate craft negotiation had always been the rule, but this is not to say that this would be preferable. Differentials could be wider than warranted in some instances.

(union policy and management and employee concepts of equity) as they were by external conditions of labor supply.⁴⁹

Other studies have shown that although wage differentials between skilled and unskilled laborers are now one third of what they were at the turn of the century,⁵⁰ the period of the greatest shrinkage was from 1935 to 1955, when the balance of power in the United States labor movement shifted from craft unions to industrial unions.⁵¹ The available empirical evidence is admittedly inconclusive and more studies are needed to substantiate the theory. However, two studies from the Bureau of Labor Statistics support the hypothesis.⁵²

The most persuasive study concerns Western Greyhound Lines, Inc.⁵³ Maintenance employees are represented both by the Amalgamated Transit Union (ATU) and by the International Association of Machinists and Aerospace Workers (IAM). The bargaining unit represented by the ATU consists primarily of unskilled or semiskilled job functions, whereas the unit represented by the IAM represents skilled employees. The only comparable overlap is in mechanic positions. The job function of the automobile mechanic written into the IAM agreement and the function of first class mechanic in the ATU contract are essentially identical,⁵⁴ yet the hourly wage scale of the automobile mechanics in the unit represented by ATU as of March 1, 1970 was \$4.52, while the hourly wage scale of first class mechanics in the IAM contract as of June 1, 1970 was \$5.89. Although a comparison of vertical wage differences between skilled and other employees is impossible because the IAM unit has only skilled labor, the horizontal difference between the same jobs is impressive.

Another study by the Bureau of Labor Statistics was made of Aluminum Company of America.⁵⁵ This study is more difficult to interpret because of the multitude of job functions aggregated into 28 job grades. Roughly, job grades 1-14 represent unskilled or semiskilled workers and grades 15-28 represent skilled workers. The average hourly wage of the unskilled and semiskilled workers in the units represented by the United Steel

⁴⁹ Ozanne, *A Century of Occupational Differentials in Manufacturing*, 44 *REV. ECON. & STAT.* 292, 299 (1962).

⁵⁰ L. REYNOLDS, *LABOR ECONOMICS AND LABOR RELATIONS* 467 (4th ed. 1964).

⁵¹ C. MORGAN, note 47 *supra*.

⁵² No biased selection process was responsible for the selection of these two studies. These represent two studies from the Bureau's Wage Chronology series in which different unions represent employees engaged in similar job functions.

⁵³ U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 1595, *WAGE CHRONOLOGY: WESTERN GREYHOUND LINES, 1945-1967* (1968).

⁵⁴ "1st Class (mechanical)—capable of completely overhauling or rebuilding any unit on motor coaches or trucks with the exception of electrical units. . . ." Council of Western Greyhound Amalgamated Divisions, Agreement between Greyhound Lines-West and the Council of Western Greyhound Amalgamated Divisions of the Amalgamated Transit Union Relation to Wages, Hours, and Working Conditions §200 (a) (1969), 76.

⁵⁵ U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 1559, *WAGE CHRONOLOGY: ALUMINUM COMPANY OF AMERICA, 1939-1967* (1967).

Workers of America as of June 1, 1967 was \$2.97 and for the skilled workers was \$3.73. The average hourly wage in the units represented by the Aluminum Workers International Union effective on June 1, 1967 for unskilled and semiskilled workers was \$2.99 and for skilled workers was \$3.70. The difference in the horizontal and vertical wage structure negotiated by the two unions is so small as to be meaningless, which reflects the apparent equality of the two groups (skilled and otherwise) in the bargaining units. That the Steelworkers was originally a CIO union and the Aluminum Workers an AFL union made no difference in the differential.

These two studies are not sufficient to establish a theory, but the results are consistent with the hypothesis.⁵⁶ Since the aggregation of craft and industrial workers diminishes craft power, which in turn diminishes the difference in wages, and since the aggregation of workers is a factor which may affect the supply of labor, individual severance of craft units will not be an optimum solution to this problem. Thus the Board's attitude that individual craft severance is disruptive may be warranted and individual representation may not lead to craft power because of the dependence of individual craft units upon the support of the industrial workers.⁵⁷

Although it is contended that the cause of the diminution of the differential is the lack of power of the craft employees in the bargaining unit, it is not suggested that the Board adopt a power theory of unit certification. Indeed, the Board rejected such a suggestion in *Continental Baking Company*.⁵⁸

⁵⁶ The author has been involved in two recent bargaining situations which verified the hypothesis. One concerned a usual production and maintenance group submerged in an industrial unit. The industrial workers were determined to narrow the differential between themselves and the skilled employees. The employer tried to push through a wage increase for the skilled group greater in amount than the increase for the industrial workers but the request was rejected. The company has been unable to hire a full complement of skilled workers at the bargained wage. The other instance occurred in public employee bargaining. The union had insisted on the inclusion of automobile mechanics in the bargaining unit, ostensibly to give upward mobility to members of the unit. In the bargaining sessions this group was used as a "whipping boy," and the union committee was determined to reduce the differential. An "across-the-board" raise was the bargained result and the mechanic rate was markedly below the community rate. Not only was the employer unable to hire mechanics at this rate, it was put in the position of training mechanics who soon moved out into the private sector at the higher wage, a public service by no means appreciated.

⁵⁷ It might be asked why individual craft units in a plant would not have the same power as a multicraft unit, even without industrial employee support, if the other craftsmen would honor the picket lines of the striking group. The honoring of picket lines comes either from a strong disciplinary procedure or through a sense of cooperation. Assuming arguendo that the craftsmen were represented in several bargaining units and further assuming that the various locals would discipline the members and would cooperate as is done in the Building Trades Unions, the result would be one that the Board is trying to prevent, industrial unrest. Because of different severance dates, different contract expiration dates, and different lengths of bargaining sessions (assuming no unified bargaining) disruption would increase. Moreover, the employer would experience "whipsawing" by which each union would play off the gains of the others. With the multicraft unit there would be only one bargaining period like the Building Trades, but unlike the Building Trades there would be only one contract and each union would not be free to make agreements with the employer.

⁵⁸ 99 N.L.R.B. 777 (1952).

Continental Division asserts that in making unit determinations the Board should favor that unit which gives to employees the greatest degree of bargaining power. There are a number of objections to considering a power factor in making unit determinations. In the first place, except for opinions expressed in a few early Board decisions . . . the Board has exclusively followed a mutuality of interest test in deciding what is an appropriate unit. The relevant portion of Section 9 (b) of the Wagner Act was reenacted without substantial change in the present Act. There is not the slightest evidence that Congress intended to supplant or supplement the mutuality of interest standard with a power factor test. See Sen. Rep. No. 105, 80th Cong. 1st Sess. p. 11. Under such circumstances, it is a fair assumption that by reenacting Section 9 (b), Congress accepted the Board's mutuality of interest standard for unit determination.

In the second place, we do not believe that, even considering Section 9 (b) together with Section 1 of the Act, as urged by Continental Division, the inference is warranted that Congress intended that the Board should consider the power factor in unit determination. Section 1 only discusses inequality of bargaining power between employers and "employees who do not possess full freedom of association or actual liberty of contract." That is not the case here. In the third place, the application of a power test would bring economic warfare to the forefront of collective bargaining, instead of keeping it in the background where it belongs. Indeed, one of Continental Division's objections to the present units seems to be that it is handicapped by not being able to strike all Continental plants at the same time. Finally, the Board would be faced with an impossible administrative problem in trying to decide when equality of bargaining power does or does not exist. For all these reasons, we reject the proposed power factor as a test in unit determinations.⁵⁹

On the other hand, one would be naive to overlook the obvious fact that every severance decision is a power decision. The Board's focus, not on power but on the results of aggregated power, keeps the decision less political and permits a more objective evaluation. Therefore, when it states, "First and foremost is the principle that mutuality of interest in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit . . .,"⁶⁰ the Board is announcing a doctrine capable of evaluation. Certainly craftsmen have a distinct mutuality of interest in wages, hours, and working conditions. If the Board is to keep this group submerged in the industrial unit and forbid it from effectively expressing its interest, then Board concepts of the well-being of the skilled employees become highly subjective.

While the causes of the decreasing differences between skilled and non-skilled workers may not be clear, the craft workers' resentment of the decrease may be at the root of much of the unrest of craftsmen in industrial unions. Dissatisfaction with the practices of craft unions and with the proliferation of separate craft bargaining units may be warranted, but the

⁵⁹ *Id.* at 782 n.11 (citations omitted).

⁶⁰ *Id.* at 782.

conflict with employee free choice and instability is not irresolvable. Large units and craft units are not necessarily incompatible nor are intraplant craft units the only possibilities for craft unionism. Rather, some reconsideration of the approaches of the Board to craft severance seems necessary. No solution that tries to balance the two goals sought by the labor boards, democracy and industrial peace, can optimize both these ends. It is suggested that the solution approaching this optimization is the creation of multicraft bargaining units.

IV. THE ARMSTRONG CORK DOCTRINE

A multicraft bargaining unit may be defined as a group of employees possessing different skills who are to be represented by one union for purposes of collective bargaining. This multicraft concept was first recognized by the NLRB in *Armstrong Cork Company*,⁶¹ where the IAM petitioned the NLRB in an original certification for representation of the maintenance employees.⁶² The Board found that even when there is no bargaining history the maintenance employees of a manufacturing plant may constitute a separate unit of the existing production group, if they so desire. Although they would be a multicraft group, the maintenance employees possessed common interests distinct from the existing group. The Board recognized that the group lacked the inherent cohesiveness of a unit comprised of a single craft, but nevertheless had some unstated interests in common, presumably craft skills. Its holding was qualified by the statement that no severance would be allowed if it would disrupt the stability of collective bargaining relationships on a broader basis; but that when this danger is not present, there is no reason to refuse the request.

Armstrong Cork was later overruled by *American Cyanamid*,⁶³ but in a second *American Cyanamid*⁶⁴ decision the Board withdrew the first opinion and let *Armstrong Cork* stand. In the first decision, the employer contended that its operations were highly integrated and that such a close relationship existed between maintenance and production employees that no basis existed for separation into the proposed units, *i.e.*, no separate skills. Replying that it had previously rejected similar considerations, the Board allowed separate representation in the absence of a bargaining history. The opinion concluded that when another union seeks to represent a broader group including the maintenance workers, no sound basis exists for allowing the narrower unit, thus inferring that the broader unit is always

⁶¹ 80 N.L.R.B. 1328 (1948).

⁶² The proposed unit included mechanics, electricians, welders, pipe fitters, carpenters, machinists, saw filers, toolroom men, welders and mechanics, mechanic and pipe fitter, truck driver, mechanic-painter, and oilers. *Id.*

⁶³ 130 N.L.R.B. 1 (1961).

⁶⁴ 131 N.L.R.B. 909 (1961).

more stable.⁶⁵ Although the Board considered the integrated operations of the workers, the second *American Cyanamid* decision held that this was a factual distinction unsupported by substantial evidence.⁶⁶

In the first *American Cyanamid* decision Chairman Leedom protested the ipso facto decision to allow the broader unit.⁶⁷ The dissent of Board Member Fanning applied the "no history of bargaining on a broader basis" test and added that the decision by the majority did not allow enough flexibility "to meet new problems in specialized areas with new solutions."⁶⁸ He agreed with the self-determination doctrine of § 9(b) of the National Labor Relations Act and concluded that the maintenance group was homogenous and distinct.⁶⁹ The factual inadequacies and faulty reasoning of the majority revealed by the dissenters previewed the second *American Cyanamid* decision.

On reconsideration, the Board reversed itself and found that the maintenance group was appropriate because

- (1) operations were not so integrated as to cause the group to lose its identity as a separate function;
- (2) a community of interest existed;
- (3) the group was readily identifiable; and
- (4) while absence of a comprehensive bargaining history does not establish the appropriateness of a separate unit, a case by case empirical determination is necessary and should be essentially examined in terms of
 - (a) homogeneity,
 - (b) cohesiveness, and
 - (c) other factors of separate identity affected by automation, technological advances and other forms of industrial advancement.⁷⁰

The second *American Cyanamid* decision examined institutional factors more carefully than the *Armstrong Cork* case and therefore cannot be regarded as having simply adopted *Armstrong Cork* principles. *Armstrong Cork* did not rely on the definitive criteria upon which both *American Cyanamid* decisions based their determination of the craft versus the noncraft issue. Thus, the second *American Cyanamid* decision generalized some criteria, but more significantly, it established a range of values on which a functional and more realistic determination of appropriateness could be made. Even considering the factual distinction which caused the Board to reconsider the first *American Cyanamid* case, it seems obvious that the redetermination employed criteria more encompassing than the *Armstrong Cork* decision. Further, while "bargaining history" is couched in dynamic terms in the

⁶⁵ *American Cyanamid Co.*, 130 N.L.R.B. 1, 2 (1961).

⁶⁶ *American Cyanamid Co.*, 131 N.L.R.B. 909, 910 (1961).

⁶⁷ 130 N.L.R.B. at 3 (Leedom, Ch., dissenting).

⁶⁸ 130 N.L.R.B. at 3 (Fanning, M., dissenting).

⁶⁹ *Id.* at 4.

⁷⁰ *American Cyanamid Co.*, 131 N.L.R.B. 909 (1961).

second *American Cyanamid* decision, the terms actually rely on some test that *Armstrong Cork* omitted.⁷¹ It may be that the factual differences in operations of the two plants explain the variances between *Armstrong Cork* and *American Cyanamid*. A more reasonable interpretation permits an analysis utilized in *American Cyanamid* with standards not used in *Armstrong Cork*.

Many cases refer to *Armstrong Cork* as controlling, yet the multicraft doctrine has been modied so much that it is difficult to predict those occasions when the group will be certified as a bargaining unit. Common interests is a criterion which has been followed in most cases. However, there has been no consistent definition of the concept. Sometimes the common interest is the skill of the employees,⁷² while other times it is common supervision,⁷³ work function of the employees,⁷⁴ or even the functional interchange of the employees.⁷⁵

The ad hoc application of the various standards announced by the Board make it very difficult to determine when a unit is ripe for severance. *Armstrong Cork* negated severance of an established bargaining unit, yet severance has been allowed where there was a history of prior bargaining.⁷⁶ Prior bargaining history has not been attributed to a successor plant,⁷⁷ although as an indicator of harmonious employee relations it might be relevant. Many decisions have not allowed a separate unit when functional integration exists,⁷⁸ but precedents are available which have not allowed integration to frustrate severance.⁷⁹ Sometimes the Board requires complete departmental separation,⁸⁰ however, instances occur when this requirement is waived.⁸¹

The case of *United States Time Corporation*⁸² illustrates the freedom from rigidity which the Board enjoys. The Board stated:

The Union and Intervenors further contend that the unit in which an election is requested by the Employer is inappropriate because it is multi-

⁷¹ Criterion 4 of the Supplemental Decision is particularly unique and criterion 1 is certainly not a rephrased statement of criterion 3 in the *Armstrong Cork* decision.

⁷² *Buddy L. Corp.*, 167 N.L.R.B. 808 (1967); *Weston Biscuit Co.*, 81 N.L.R.B. 407 (1949).

⁷³ *Celanese Corp. of Am.*, 84 N.L.R.B. 207 (1949).

⁷⁴ *G. Fox & Co., Inc.*, 155 N.L.R.B. 1080 (1965); *F. W. Woolworth Co.*, 144 N.L.R.B. 307 (1963).

⁷⁵ *Burndy Corp.*, CCH NLRB Dec. ¶ 21,701 (1970); *Celanese Corp. of Am.*, 84 N.L.R.B. 207 (1949).

⁷⁶ *Jay Kay Metal Specialties Corp.*, 163 N.L.R.B. 719 (1967); *National Biscuit Co.*, 88 N.L.R.B. 313 (1950).

⁷⁷ *St. Regis Paper Co.*, 84 N.L.R.B. 454 (1949); see *B. F. Goodrich Chem. Co.*, 84 N.L.R.B. 719 (1967).

⁷⁸ *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387 (1966); *Wah Chang Albany Corp.*, CCH NLRB Dec. ¶ 22,456 (1968).

⁷⁹ *Halliburton Portland Cement Co.*, 91 N.L.R.B. 717 (1950).

⁸⁰ *Mathieson Chem. Corp.*, 100 N.L.R.B. 166 (1952).

⁸¹ *Goodyear Eng'r Corp.*, 100 N.L.R.B. 973 (1952).

⁸² 108 N.L.R.B. 1435 (1954).

craft. However, insofar as appears from the record, such unit comprises all the maintenance employees of the Employer. The Board has been reluctant to sever such a maintenance group from an existing production and maintenance unit, where to do so would disrupt stable collective-bargaining relations on a broader basis. Where, however, there is no controlling collective-bargaining history on a broader basis, the Board has found that the maintenance employees, as a multicraft group, possessing separate interests from those of production employees, constitute a separate appropriate unit. In view of the absence of any recent bargaining history on a broader basis, we conclude that the earlier plantwide bargaining history does not preclude the finding that a unit limited to the Employer's maintenance employees is appropriate for bargaining purposes.⁸³

The results of the decisions, which developed the *Armstrong Cork* doctrine and rely on it for authority, illustrate that no well-defined guidelines exist in the Board's severance policy. Although *Mallinckrodt* has an air of definiteness in its statement of six criteria,⁸⁴ these criteria have all been used in previous Board decisions and it would require a large dose of optimism to speculate that predictions for severance will prove more accurate in the future.⁸⁵

An examination of these and other cases suggests several ways to analyze the trend which has followed *Armstrong Cork*:

- (1) The Board has not been careful with its prose.
- (2) Vague criteria allows more flexibility in the decisions by the Board.
- (3) A factual distinction exists in each of the other cases which necessitated changing the criteria which had been applied in *Armstrong Cork*.

⁸³ *Id.* at 1436-37 (footnotes omitted).

⁸⁴ The following areas on 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.
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 employer'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.

162 N.L.R.B. at 397 (footnotes omitted).

⁸⁵ *Mallinckrodt* added very little to the criteria laid down in the second *American Cyanamid* decision.

- (4) The Board has become more sophisticated and is in the continual process of the development of standards to be used.

Probably all these factors have contributed to the flow of inconsistent decisions. While the Board's opinions lack consistency, the multicraft concept, fostered by *Armstrong Cork*, still has ample precedent for future development.⁸⁶

V. MULTICRAFT BARGAINING UNITS

Widespread implementation of the multicraft concept does not require the development of new standards for the determination of the proper unit, but rather requires an extension of present Board policy in original representation proceedings into the severance area. The Board's willingness to approve multicraft units in several proceedings contrasts sharply with its reluctance to *sever* multicraft units. However, even the restrictive Board practices in severance cases are speckled with analogous precedent for the extension of multicraft bargaining. Finally, the theoretical framework in which all unit determinations are made—balancing the employees right to select the union responsive to his particular needs with the need for industrial stability—increasingly affords an ample predicate upon which to base the multicraft system.

VI. MULTICRAFT UNITS IN ORIGINAL REPRESENTATION PROCEEDINGS

Concern that skilled employees be adequately represented and a feeling that a multicraft unit can effectively represent a group with varying skills frequently combine to prompt the Board to grant skilled workers separate representation in original proceedings.⁸⁷ Indeed, the Board rejects the idea that a craft unit is proper and effective only when composed of workers possessing similar skills⁸⁸ and with rare consistency favors multicraft representation to a single craft representation in original proceedings.⁸⁹

Opinions denying multicraft representation in favor of plant-wide bar-

⁸⁶ See, e.g., *Monsanto Co.*, CCH NLRB Dec. 5 22,015, at 28,324 (1970) (Fanning, M., dissenting), where Member Fanning chides the Board for ruling as it did but refusing to overrule *American Cyanamid*.

⁸⁷ See *Armstrong Cork Co.*, 80 N.L.R.B. 1328 (1948). See also *Allied Chem. & Dye Corp.*, 120 N.L.R.B. 63 (1958) (listing similar cases in which certification was granted); *Dundee Cement Co.*, 170 N.L.R.B. 422, 425 (1968) (Fanning, M., dissenting).

⁸⁸ See, e.g., *Armstrong Cork Co.*, 80 N.L.R.B. 1328 (1948), where a multicraft unit was deemed appropriate to represent "mechanics, electricians, welders, carpenters, pipe fitters, machinists, saw filers, toolroom men, . . ." etc. *Id.*

⁸⁹ See, e.g., *Magma Copper Co.*, 115 N.L.R.B. 1 (1956) and *National Carbon Co.*, 107 N.L.R.B. 1486 (1954), where a single craft representation was denied but multicraft representation approved. See also *Armstrong Cork Co.*, 80 N.L.R.B. 1328, 1328 n.1 (1948); "We find it unnecessary to discuss the alternative unit [the single craft unit] in view of our finding that the departmental unit is appropriate." In one case the Board approved a multicraft unit despite a history of singlecraft representation.

gaining are characteristically devoid of meaningful explanation of the Board's holding,⁹⁰ although they do convey the impression that the Board has no objection to multicraft representation, but merely feels that in the given situation craftsmen can be properly represented by a plant-wide unit.⁹¹ Since the union seeking to represent the craftsmen cannot appeal and since the employer is rarely interested in doing so, the Board is seldom required to explain its reasoning to the appellate courts.⁹² Cases in which the Board has rejected multicraft representation detract from, but do not annihilate, the years of precedent for separate multicraft units. The consistent position of the Board is that multicraft units are proper if no plant-wide unit is desired.⁹³ Member Fanning, a frequent dissenter to Board action denying a separate unit, often observed the inconsistency of saying that a multicraft unit is always appropriate if no plant-wide petition is pending, but that it may not be appropriate when there is a petition pending.⁹⁴

Thus, several conclusions are apparent. The Board is convinced that multicraft units frequently provide appropriate representation for workers with varying skills. When no plant-wide petition is pending, multicraft representation is uniformly granted. A multicraft unit is preferred by the Board to single craft units in original representation proceedings. Cases denying a multicraft unit hinge not upon a feeling that a multicraft unit is inappropriate or ineffective, but rather upon a feeling that adequate representation of craftsmen will result from plant-wide bargaining.

Employer feelings on the multicraft idea are difficult to infer from the reports. Generally, the employer opposes the petition for a separate unit and files a brief in support of the union seeking plant-wide representation. But this is by no means the employer's only position. Cases are reported in which the employer took no position⁹⁵ and in which the employer favored a separate unit.⁹⁶ Employer action may, however, be motivated by campaign tactics rather than by true feelings on the desirability of separate representatives because the present Board policies make severance unlikely. Further, since in these cases the employer may be unaccustomed to bargaining, he may feel that initially it is preferable to face only one union.

⁹⁰ *Dundee Cement Co.*, 170 N.L.R.B. 422 (1968), denying separate representation to electrical maintenance workers.

⁹¹ *Id.*

⁹² See Cohen, *Two Years under Mallinckrodt: A Review of the Board's Latest Craft Unit Policy*, 20 LAB. L.J. 195 (1969).

⁹³ *Dundee Cement Co.*, 170 N.L.R.B. 422 (1968); *American Cyanamid Co.*, 130 N.L.R.B. 1 (1961).

⁹⁴ *Dundee Cement Co.*, 170 N.L.R.B. 422, 425 (1968) (Fanning, M., dissenting).

⁹⁵ *Fort Die Casting Corp.*, 115 N.L.R.B. 1749 (1956); *Davison Chem. Corp.*, 105 N.L.R.B. 925 (1953).

⁹⁶ *American Cyanamid Co.*, CCH NLRB Dec. ¶ 20,181 (1968); *Westinghouse Elec. Corp.*, 84 N.L.R.B. 213 (1949).

VII. SEVERANCE OF MULTICRAFT UNITS

The reluctance of the Board to sever multicraft units⁹⁷ is puzzling when compared to the relative favor with which the Board greets original applications for multicraft representation. Seemingly, the consideration which led the Board to allow multicraft representation at the outset would carry forward into the severance cases. However, this has not been the case and there has been no explanation of this policy difference.⁹⁸ However, this is not to say that the Board is unconcerned with the proper representation of craftsmen in established units. Clearly this consideration has always weighed heavily with the Board in the traditional cases of single craft severance.⁹⁹ The implication is that the Board opposes severance as such and not separate representation. Indeed, Board opinions treat as axiomatic the proposition that severance is disruptive.¹⁰⁰

Approximately three years after the Board promulgated its most liberal severance rule in *American Potash*, Professor Dallas Jones undertook a study to determine the effects of that decision on stable labor relations.¹⁰¹ He surveyed industrial relations directors of the companies involved in all severance decisions from the date of the *Potash* decision until June 1, 1957. The majority of the directors reported that they believed that the effect of the decision was not conducive to stable labor relations. However, the questionnaire included questions designed to investigate the actual effect of severance. In some of the companies the severances led to the industrial problems feared by most labor directors, *i.e.*, jurisdictional disputes, excessive wage increases, and the possibility of further fragmentation. But these problems arose in only a minority of cases. Some employers believed that the liberal severance policy was conducive to stable labor relations. However, even this group expressed some fear that unlimited severance could become a problem.

A somewhat universal problem resulting from severance is the resultant increase in negotiation time. This was a fear in both the employers who were opposed to severance and to those who had no opinion on the severance policy. Overall, Professor Jones concluded that a liberal severance policy had not been nearly as disruptive as it could have been. He pre-

⁹⁷ *Fort Die Casting Corp.*, 115 N.L.R.B. 1749 (1956).

⁹⁸ "Thus, while we find the *Mallinckrodt* tests useful in our determination of the appropriateness of the unit requested here, we will not apply the same measure in dealing with whether an appropriate craft unit should initially be established as we would in considering whether severance should be granted from an established bargaining unit." *Fremont Hotel, Inc.*, 168 N.L.R.B. 115, 117 (1967).

⁹⁹ The manner in which the plant-wide union treats the craftsman has been a factor to which the Board has always looked. *See, e.g.*, *Wah Chang Albany Corp.*, CCH N.L.R.B. ¶ Dec. 22,456 (1968).

¹⁰⁰ This doctrine can be traced back to the first severance case, *American Can Co.*, 13 N.L.R.B. 1252 (1939), in which the Board stated that craft severance "would make stability and responsibility in collective bargaining impossible." *Id.* at 1256-57.

¹⁰¹ Jones, *Self-Determination vs. Stability of Labor Relations*, 58 MICH. L. REV. 313 (1960).

dicted that if limitations were put on the severance policy the situation would not become as acute as feared. The experience showed that stability was inversely related to the number of units severed.

Data in support of the Board's opinion that severance encourages disruption is elusive. The usual suggestion seems to be that forcing an employer to deal with more than one union may be disruptive and lead to costly tie-ups of production by minority groups.¹⁰² Possibly there is some feeling that two unions cannot coexist in one plant. However, such arguments avoid the issue, for presumably if these factors influenced the Board, it would be more favorably disposed to multicraft severance than to single craft severance, which has not been the case.¹⁰³ More importantly, if the suggested objections were valid, they would undercut the Board's permissive policy in original proceedings because the evils feared would be the same whether the separate system was established through severance or through initial recognition. One is left with the conclusion that it is the very act of severance which the Board fears.

Arguably, severance of multicraft bargaining units would be more offensive to existing plant-wide units than the severance of traditional crafts because multicraft severance results in a larger reduction of existing unit membership. Such considerations might be a basis for Board reluctance to sever multicraft groups were it not for the fact that the Board has traditionally severed certain departmental groups such as power house employees.¹⁰⁴

Under the *Potash*¹⁰⁵ criteria there might have been justification for the Board's reluctance to sever multicraft units, for its policy was that traditional craftsmen should be afforded traditional representatives. Thus, multicraft severance was unnecessary because craftsmen were entitled to responsive representation by unions concerned with their welfare alone.¹⁰⁶ The abandonment of the *Potash* test led some to believe that the Board would be more favorably disposed to multicraft severance, which has not resulted.¹⁰⁷ Therefore, the Board has been required to make the same determinations in original representation cases, departmental severance cases, and traditional craft severance cases as it would be required to make if confronted with petitions for severance of a multicraft union. For

¹⁰² "The withdrawal of the work of a handful of craftsmen from among a large working force will effectively close the plant. There is no smaller group, except management itself, whose abstention from productive effort will produce so complete a paralysis." Kerr & Fisher, *Multiple-Employer Bargaining: The San Francisco Experience*, in *INSIGHTS INTO LABOR ISSUES* 25, 44 (R. Lester & J. Shister eds. 1948).

¹⁰³ *Fort Die Casting Corp.*, 115 N.L.R.B. 1749 (1956).

¹⁰⁴ *Crocker, Burbank and Co.*, 80 N.L.R.B. 774 (1948).

¹⁰⁵ *American Potash & Chem. Corp.*, 107 N.L.R.B. 1418 (1954).

¹⁰⁶ *Fort Die Casting Corp.*, 115 N.L.R.B. 1749 (1956).

¹⁰⁷ See Du Ross, *Craft Severance and National Labor Policy—the Aftermath of Mallinckrodt*, 30 U. PITT. L. REV. 577 (1969).

example, who are craftsmen and what groups are homogeneous are recurrent issues in these determinations. There appears to be no reason why the expertise and experience of the Board derived from the three former types of cases should not be carried over and applied to multicraft severance.

VIII. INDUSTRIAL STABILITY AS A PREDICATE FOR THE MULTICRAFT CONCEPT

Determination of the proper unit is always made with a view toward maximizing the employees' right to choose a representative who will effectively represent their interests while at the same time minimizing industrial unrest.¹⁰⁸ The balance which the Board may strike at one time may later prove inadequate when conditions have changed. The severance tests which the Board has promulgated indicate a responsiveness to changing conditions in the craft industry. Reexamination of the traditional severance test suggests that multicraft severance should also be reexamined.

Present conditions dictate that a new balance be struck in order to achieve stability. *Mallinckrodt*¹⁰⁹ was thought by some to indicate Board willingness to be more permissive.¹¹⁰ This has not been the case.¹¹¹ Several groups of craftsmen have been able to obtain a veto power over plant-wide contracts.¹¹² At least one court has upheld such action¹¹³ and so has the Board.¹¹⁴ To the extent that craftsmen are able to achieve a veto, the effects would be more disruptive than multicraft representation.¹¹⁵ The extent to which craftsmen need a veto indicates the need for assurances of fair treatment from the plant-wide unit.

Wide implementation of the multicraft concept offers relief to dissident craftsmen without the proliferation of bargaining units of single craft representation. It is a middle road to stability and fair treatment of craft workers and one which is available to the Board within the formula of

¹⁰⁸ See *Buddy L. Corp.*, 167 N.L.R.B. 808 (1967). See also Comment, *The Development of the Craft Severance Doctrine*, 11 ST. LOUIS U.L.J. 615 (1967).

¹⁰⁹ *Mallinckrodt Chem. Works*, 162 N.L.R.B. 387 (1966).

¹¹⁰ See 8 B.C. IND. & COM. L. REV. 988 (1967). This author like most others was only optimistic about the success of craft units to sever if the *Mallinckrodt* standards were liberally applied.

¹¹¹ DuRoss, *supra* note 27.

¹¹² E.g., the UAW gives this veto power to craft employees.

¹¹³ *Lear Siegler, Inc. v. UAW*, 287 F. Supp. 692 (W. D. Mich. 1968). The Court upheld the right to the veto against the contention that such a veto when used to continue a strike that the majority of industrial workers wished to end constituted an illegal secondary boycott by the craftsmen in contravention of the Labor Management Relations Act § 8(b)(4)(i)(C), 49 Stat. 452 (1935), as amended 29 U.S.C. § 158(b)(4) (1970).

¹¹⁴ *Chrysler Corp.*, Nos. 7-RC-8185 through 7-RC-8195 and 7-RC-8209 through 7-RC-8211, decisions of the N.L.R.B. Regional Director (Aug. 1, 1967).

¹¹⁵ There may be some virtue in having only one disruption, but the complete work stoppage by a minority is less desirable than leaving the employer at least the option of attempting to replace striking craftsmen.

Mallinckrodt and within the framework of prior Board practice in original representation proceedings and departmental severance.

IX. SINGLEPLANT VERSUS MULTIPLANT-MULTICRAFT UNITS

If amalgamation of separate craft employees into larger multicraft units is to be the predicate for future Board policy on the premise that this will lessen industrial strife while allowing craftsmen a better opportunity to achieve their demands, it might be asked why amalgamation of all craftsmen in two or more plants might not better achieve these ends. The issue of multicraft-multiplant units is pertinent to Board policy, but it is not the same issue as separate craft representation.¹¹⁶

Present Board certification policy concerning multiplant units is built on a functional framework. Only that much resembles the present craft certification policy. Generally, a history of multiplant collective bargaining will be determinative,¹¹⁷ but lacking this, the community of interest,¹¹⁸ the functional integration,¹¹⁹ the level of supervision,¹²⁰ and the functional interchange of employees¹²¹ are the relevant factors. Undoubtedly such a functional policy is devised to promote minimal disruption and to further assure that the common needs of the employees at the various plants will be met by a sensitive representative.

The certification issue in craft versus industrial representation is concerned more with the status of the employees and the legitimate unique needs attributed to that status. Once the Board recognized that the craft and public needs can best be served by craft bargaining, the issue of how large the craft units should be becomes a functional decision for the Board. Certainly this decision can be effectively made under the present framework.

It might be argued that multicraft aggregation will create one of the same problems that concerns the Board in its consideration of multiplants units, the fear that employees who are not functionally related will be represented by a union which is not sensitive to the special problems created by this lack of functional relationship, *e.g.*, special problems created by integration into a production line that are related to the production line.

¹¹⁶ It might be thought that this tendency for preservation of existing memberships, formally incorporated in the 1955 "No-raid" AFL-CIO policy, would be an insurmountable deterrent to implementation of multicraft severance, but this view overlooks the willingness of other international unions who are neither *de facto* or *de jure* parties to the agreement. Even the parties to the agreement do not uniformly honor it and if the multicraft concept is fostered with the resulting possibility of a larger unit and greater gain, the pressure to raid will become more intense.

Craftsmen may petition the Board for representation apart from their present representative (severance) or if they are not presently represented, they may petition the Board for an election to decide the issue of representation.

¹¹⁷ *V.I.P. Radio, Inc.*, 128 N.L.R.B. 113 (1960).

¹¹⁸ *North Am. Aviation, Inc.*, 131 N.L.R.B. 399 (1961).

¹¹⁹ *Renuart Lumber Yards, Inc.*, 130 N.L.R.B. 631 (1961).

¹²⁰ *Barr's Jewelers*, 131 N.L.R.B. 235 (1961).

¹²¹ *Carter Camera & Gift Shops*, 130 N.L.R.B. 276 (1961).

There is a possibility that some craftsmen will be put in a unit that will not serve them as well as an industrial unit. However, exceptions to the multi-craft unit should not be permitted for these occasional craftsmen because the adverse effects on the craftsmen as a group are more than offset by a grouping that will be more sensitive to their financial and societal needs.

X. CONCLUSION

Inconsistencies in Board severance policy would seemingly be explained away if the Board were committed to the proposition that a larger unit is always more stable. However, such a policy would demand that multi-craft severance be preferred to single craft severance. Such a policy would also demand that craft employees exercise no independent control over acceptance of the bargaining agreement. Even if the Board would follow a consistent policy aimed at the largest amalgamation of employees, the resultant emphasis on stability at the expense of all other interests would not be warranted. Other public interests, such as the promotion of a free flow of labor and the preservation of the industrial democratic tenet of employee free choice, rate strong consideration in striking the final balance.

Flexibility is a necessary element in any Board policy. The two-part test of status and appropriateness applied to any craft group seeking separate recognition should continue to be applied. It is within these parts that flexibility should be the norm. The Board should continue to base its decision of whether the petitioning employees qualify as craftsmen on:

- (1) The length and rigor of the craft training program; and,
- (2) The nature of the work performed after training.

The necessity for the first requirement is obvious. If craftsmen are to be put in a position of greater bargaining power, the acceptable reason for doing so is that years of sacrifice expended to acquire superior skills merit higher rewards.

The necessity for the second requirement is not so obvious. The separation will probably lead to a higher wage scale and differential between skilled and other workers. These differences should relate to the economic function of the employees; and if they are not performing a craft function, the benefits which accompany aggregate craft bargaining should be denied.

Historically, craft wage rates have been governed by the general value of a skill rather than by the economic circumstances of a particular industry or by the actual work performed. The employer essentially is paying for the whole reservoir of talents possessed by a qualified journeyman.¹²²

An employer may have to pay more for the services of a journeyman even though he does not regularly utilize his skill. But it is wrong to allow this

¹²² Chandler, *Craft Bargaining*, in *FRONTIERS OF COLLECTIVE BARGAINING* 50, 60 (J. Dunlop & N. Chamberlain eds. 1967).

individual to utilize the group bargaining power of those who are performing a more valuable function.

After determining that the employees qualify as craftsmen, the Board should not decide the question of certification automatically. Instead, it should remain flexible by evaluating the circumstances of the individual case according to the following guidelines:

- (1) The community of interest of the employees; and,
- (2) The importance of the functional integration of the production process.

The community of interest of the employees should be defined so as to emphasize the interest of the group as craftsmen. Perhaps one reason to continue an existing group may be said to exist when the unit appears to operate smoothly. But the filing of a severance petition with the requisite 30 percent interest¹²³ is evidence of discontent and it is difficult to see what more the craftsmen should have to do to establish discontent. Certainly the Board would not wish to follow a policy that encouraged wildcat strikes or other forms of disruptive conduct.

Continuity of the production process is a goal common to all parties and when that process is disrupted society suffers least from a minimum amount of disruption. Therefore, it may be more important to society to place craft workers who are integrated in a continuous production process into a unit in which they are unable to bargain apart from the industrial workers involved in the process. Perhaps in *Mallinckrodt* the Board thought that the continuity of the production process for the defense effort outweighed the other factors which might have justified severance. Reasons such as this should be stated so that a flexible yet predictable body of severance decisions could develop. To refuse severance because the craftsmen are functionally integrated is warranted only when the Board considers the production critical:

The craft wage is sometimes an announced factor in the Board's decision on severance. But the Board will not be able to make the best overall decision by a comparison with other plants¹²⁴ or by deciding that the craftsmen are the highest paid workers in the particular plant.¹²⁵ The craftsmen in other plants may be underpaid or overpaid depending on their bargaining power. The relative wage scale within the particular plant is an equally unreliable factor. Therefore, the Board should opt in favor of multicraft severance unless continuity of the production process compels a different

¹²³ *Boeing Airplane Co.*, 86 N.L.R.B. 368 (1949).

¹²⁴ "Petitioner failed to introduce any evidence regarding a comparison of wages paid to the employees in the classifications which the Petitioner seeks to represent and those employees in similar classifications working elsewhere." *Lear Siegler, Inc.*, 170 N.L.R.B. 766, 771 (1968).

¹²⁵ *Jay Kay Metal Specialties Corp.*, 163 N.L.R.B. 719 (1967); *Wah Chang Albany Corp.*, CCH NLRB Dec. ¶ 22,456 (1968).

solution. The wage will then be determined by bargaining power, *i.e.*, competitive market power.

Although the degree of unrest caused by craft bargaining may be less than is generally believed, fragmentation generates friction and restrictive craft practices retard technological change. Moreover, the trend toward centralization of industry should not be obstructed by craft units. However, the reorganization of craft employees into multicraft bargaining units can simultaneously promote craft representation without the present shortcomings which accompany single craft unionism. In addition, this amalgamation would give craft unions an opportunity to resolve some of the problems of the occupational differential which historically have plagued cooperation. If craft unions represent not only their own craft, but others as well, there would be a tendency to organize councils or other joint associations in order to reach a proper wage differential between the various craft occupations.¹²⁶ The specialized nature of many of the existing craft unions would thus become broadened in the interests of multicraft representation.

The rigor of a lengthy training period necessarily means that there will be fewer craftsmen than workers of lesser skills and that in a competitive market the craftsmen will be able to command higher wages. Thus, even if they are not allowed to bargain competitively with their employers, they should be able to demand higher wages than less skilled employees. This principle has been universally recognized by the Board, so the real issue concerns the manner in which this equity is to be realized. Over the years the Board has demonstrated that when it is not satisfied with its solutions it is willing to adopt new approaches to the problem. However, neither a return to the permissiveness of *Potash*, the middle ground of *National Tube*, nor the present restrictive policy of *Mallinckrodt* offers a satisfactory solution.

It has been asserted that any aggregation permitted by the Board leads to increased power which necessarily increases the opportunities for disruption. But this undesirable possibility is more than offset by the increased ability of craftsmen to bargain for their needs. On the other hand, the freedom to bargain is not unlimited and it should be scrutinized and curtailed in all instances when it is not in the national interest. Yet even with these restrictions, multicraft units will strike the best balance between employee democracy and industrial stability.

¹²⁶ This kind of cooperation is not only possible but is being done voluntarily by ten unions which bargain for one binding contract with Ingalls Nuclear Shipbuilding Division as the consolidated Metal Trades Council.

