

In the Matter of BAUSCH AND LOMB OPTICAL COMPANY, EMPLOYER and  
UNITED OPTICAL AND INSTRUMENT WORKERS OF AMERICA, C. I. O.,  
LOCAL 27, PETITIONER

*Case No. 32-RC-259.—Decided November 17, 1950*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to include two employees who are not presently included in the already established production and maintenance unit at the Employer's Little Rock, Arkansas, plant.

On November 16, 1949, the Petitioner was certified as the exclusive bargaining representative for the production and maintenance employees of the Riggs Optical Company at its Little Rock, Arkansas, plant.<sup>1</sup> In April 1950, the Riggs Optical Company, formerly a subsidiary of the Employer herein, was absorbed by the latter without any change in the nature of the business or personnel. The Employer conceded recognition to the Petitioner as the certified bargaining representative for its employees in the afore-mentioned unit. Later, during contract negotiations, a dispute arose between the Employer and the Petitioner concerning the supervisory status of J. W. Kaufman and Owen T. Gabriel. The Employer contended that they had been

<sup>1</sup> Case No. 32-RC-148. Unpublished.

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excluded by the Board as supervisors in Case No. 32-RC-148,<sup>2</sup> and refused to bargain concerning them. Thereupon, the Petitioner filed the present petition.

The Employer here contends that the Board's decision in Case No. 32-RC-148 is a bar to this proceeding. We do not agree. From a review of that case, it appears that there was no contest with respect to the supervisory authority of the employees involved, and there was no evidence before the Board describing the duties of Kaufman and Gabriel. The determination there was based solely upon the conclusions of a representative of the employer. We shall treat the instant petition in the nature of a request to amend the certification in Case No. 32-RC-148. The sole question to be determined here is whether Kaufman and Gabriel are supervisors. If they are not, they may properly be included in the already existing unit.<sup>3</sup>

*J. W. Kaufman* generally receives, prices, and assigns prescriptions for optical lenses and makes the final inspection with respect thereto. However, in the absence of the plant manager Kaufman is in charge of the plant. For the past 6 months the manager has been away on business from the plant from part of a day to 2 and 3 days in succession each week. During the manager's recent 2-week vacation Kaufman handled all of the Employer's correspondence, and he also certified the payroll for that period. Under all the circumstances, and the absence of other intermediate supervision between the manager and the production employees, we believe that Kaufman occupies a position in the plant by virtue of which his interests are closely aligned with those of management. We shall exclude him from the existing unit.<sup>4</sup>

*Owen T. Gabriel* inspects optical lenses before they are mounted in frames. Although, he, as a matter of routine, rejects and returns for correction defective work to the employee responsible for such condition, such authority, is not in itself sufficient to constitute supervisory authority.<sup>5</sup> While in the past, the manager, in contemplation of a reduction in force, consulted Gabriel concerning the quality of work produced by employees, this appears to have involved only the furnishing of information rather than the making of effective recom-

<sup>2</sup> In that case, Kaufman and Gabriel, respectively, were described in the exclusions as the "supervisor in charge of billing, pricing and final inspection" and the "surface room foreman."

At the election, Kaufman and Gabriel voted challenged ballots. As such ballots did not affect the results of the election, there was no disposition made of the challenges.

<sup>3</sup> Cf. *Continental Oil Company*, 85 NLRB 827; *Inter-Inland Steam Navigation Co., Ltd.*, 61 NLRB 988.

<sup>4</sup> *Queen City Furniture Company, Inc.*, 87 NLRB 634.

<sup>5</sup> *Shelbyville Desk Company, Inc.*, 82 NLRB 1230; *Chase Aircraft Company, Inc.*, 91 NLRB 288.

mendations. We find that Gabriel is not a supervisor, and shall include him in the already established unit.<sup>6</sup>

The Employer concedes that the Petitioner represents the employees in the existing unit. There is therefore no reason for further investigation of the question concerning representation by way of election or otherwise. We shall amend the certification in Case No. 32-RC-148 to conform with our decision herein, and shall dismiss the instant petition.

#### ORDER

IT IS HEREBY ORDERED that the certification in Case No. 32-RC-148 be amended as to include Owen T. Gabriel in the unit.<sup>7</sup>

IT IS FURTHER ORDERED that the petition (Case No. 32-RC-259) filed herein be, and it hereby is, dismissed.

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<sup>6</sup> *United States Gypsum Company*, 81 NLRB 310.

<sup>7</sup> This amendment is not to be construed as a new certification.