group inasmuch as the Clerks' unit is not itself an appropriate one.

Neither Petitioner has any interest in representing employees other than those petitioned for, nor has either evinced any interest in seeking to represent all employees of the Employer in a single unit. Accordingly, we find that the units requested by the Petitioners are inappropriate for collective bargaining purposes, and shall, therefore, dismiss the petitions.

Order

IT IS HEREBY ORDERED that the petitions herein be, and they hereby are, dismissed.

MONROE BROWNE AND LEONARD RURUP, D/B/A McCOY TRUCK TIRE RECAP COMPANY[1] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 87, AFL, *Case No. 21–RM–170. March 5, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Eugene M. Purver, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

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 a limited partnership, with its place of business in Bakersfield, California. The Employer is engaged in the business of recapping and repairing used tires and selling and servicing new tires.

The Employer's total annual sales are approximately $450,000, all of which are sold to customers located within the State of California. However, during 1950, the Employer made sales of approximately $104,000,[3] to local customers who, according to the uncontradicted evidence submitted by the Employer, are engaged in interstate commerce. Of that amount, sales totaling approximately $73,000 were made to trucking firms engaged in transporting materials, agricultural commodities, and cattle in interstate commerce. In view of the

---

[1] The petition and other formal papers were amended at the hearing to show the correct name of the Employer.

[2] The hearing officer referred to the Board the Union's motion to dismiss this proceeding. The motion is denied, for the reasons stated in paragraphs numbered 1 and 4.

[3] Including Federal and State taxes of approximately 8½ percent.

Employer's sales to trucking firms which function as instrumentalities and channels of interstate commerce,[4] we find that the Employer is engaged in interstate commerce and that it will effectuate the policies of the Act for the Board to assert its jurisdiction in this proceeding.

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

3. The Employer, having been requested and having refused to recognize the Union as the bargaining representative for the employees, filed the present petition. The Union contends that this proceeding is barred by the existence of a contract entered into between the Employer and the Union on April 21, 1948, following a consent election on February 26, 1948 (Case No. 21–RC–117), and an election for authorization of a union-shop agreement under Section 9 (e) (1) of the Act (Case No. 21–UA–372). The agreement contains a provision for automatic renewal from year to year in the absence of written notice prior to June 1 of each year. The agreement also contains a union-security clause, which reads as follows:

> Conditions of Employment: All employees covered by this Agreement shall be members of the Union in good standing as a condition of employment.
>
> When new or additional employees are needed the Employer shall notify the Union to that effect and give equal consideration to the men sent out by the Union. In the event a man is hired who is not a member of the Union, he shall, before starting to work secure a clearance from the Union, such clearance not to be unreasonably withheld, and thereafter shall become a member of the Union in good standing within thirty (30) days after starting to work. It is further understood and agreed upon that the employer shall be the judge of the competency and qualifications of the employee.

Contrary to the proviso of Section 8 (a) (3) of the Act, the first clause of the union-security provision required employees who were employed as of the date of the agreement to become or remain members of the Union during the first 30 days of the agreement. The provision also requires that new employees who are not members of the Union obtain a clearance from the Union as a condition of starting to work. Moreover, the clear effect of the provision is to give preferential treatment to union members, who need not obtain such clearance. Because of these requirements, the provision goes beyond the limited union-security provisions permitted by Section 8 (a) (3) of

[4] *Edward Bosch & Sons*, 92 NLRB 520; *Depew-Paving Co., Inc.*, 92 NLRB 245; see *Hollow Tree Lumber Company*, 91 NLRB 635.

the Act, and is illegal even though it was executed following an election conducted under Section 9 (e) (1) of the Act. Accordingly, the contract cannot operate as a bar to this proceeding.[5]

We find that 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. In accordance with the agreement of the parties, we find that the vulcanizers, buffers, section men, tire changers, and floor service men employed at the Employer's Bakersfield, California, place of business, excluding office employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

[5] *Seattle Wholesale Florists Association*, 92 NLRB 1186; *Aeroil Products Company, Inc*, 86 NLRB 639; *Broadway Iron and Pipe Corporation*, 83 NLRB 942; *American Export Lines, Inc.*, 81 NLRB 1370; *C. Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163. The fact that the employer is presently not enforcing the provision is immaterial. *Evans Milling Company*, 85 NLRB 391; *Hawley & Hoops, Inc*, 83 NLRB 371. This conclusion makes it unnecessary to consider the Employer's contention that the contract has been open for negotiations since June 1, 1948.

BUSHNELL STEEL COMPANY *and* SHOPMEN'S LOCAL UNION NO. 616 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL, PETITIONER. *Case No. 10–RC–1085. March 5, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before James W. Mackle, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

[1] The hearing officer correctly overruled the Employer's motion to continue this proceeding indefinitely, pending disposition by the General Counsel of the appeal taken from the Regional Director's dismissal of the unfair labor practice charge in Case No 10–CA–1124. We have been advised administratively that the General Counsel has since sustained the action of the Regional Director

After the hearing, the Employer filed with the Board a motion for rehearing and a motion to dismiss In its motion for rehearing, the Employer contends, first, that the hearing officer erroneously allowed the intervention of the International Association of Machinists, District Lodge No 112 in this proceeding, because of alleged failures of service on the Employer, of the motion and the Regional Director's ruling thereon, as required by Section 203 57 of the Rules and Regulations of the Board However, the Employer has not shown in what way, if any, it was prejudiced by any such failure. Its contention is, therefore, without merit The Employer also contends, in its motion for rehearing, that the hearing officer erroneously made prejudicial rulings excluding evidence regarding the existence and identity of the Petitioner and the Intervenor and