

the unit sought by the Petitioner. Indeed, we are satisfied that the duties and obligations of these inspectors as members of a labor organization which also represents agents, would not require of them acts or deeds incompatible with the loyal discharge of their duties as employees. We have reached this conclusion after giving due consideration to the legislative history of the Act,⁵ the nature of the employment of these inspectors, the necessity for their complete loyalty to the Employer, and the reasonably anticipated demands which might be made upon them as members of the proposed unit.

Moreover, we would not reach a different conclusion even assuming, as contended by the Employer, that the inspectors do make recommendations in their report on investigations.⁶ In the original Decision herein, we recognized that the inspectors' reports could affect both the earnings and employment status of insurance agents. We do not find that the inclusion of recommendations in the reports would have any greater effect on the earnings and employment status of the insurance agents, or on the nature of the relationship between the agents and the inspectors insofar as representation by the Petitioner is concerned.

Chairman Farmer and Member Styles took no part in the consideration of the above Supplemental Decision.

⁵The legislative history of the Act clearly shows that although the Congress considered the subject of divided loyalty of certain classifications of employees whose duties placed them in situations somewhat analogous to that of the inspectors here involved, it decided after much deliberation to legislate restrictively only with regard to supervisors and guards.

⁶Accordingly, we deny the Employer's motion for rehearing as to the alleged fact that the investigators do make recommendations.

F. H. MCGRAW & COMPANY, Petitioner *and* LOCAL NO. 236, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL.¹

F. H. MCGRAW & COMPANY, Petitioner *and* OFFICE EMPLOYEES INTERNATIONAL UNION, AFL.² Cases Nos. 9-RM-87 and 9-RM-88. August 6, 1953

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, separate hearings were held

¹Hereinafter called Teamsters. Office Employees International Union, AFL, hereinafter called Office Workers, was permitted to intervene in Case No. 9-RM-87 on the basis of its showing of interest.

²Teamsters was permitted to intervene in Case No. 9-RM-88 on the basis of a contract interest.

before Clifford L. Hardy, hearing officer. These cases are hereby consolidated for the purpose of decision. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.³

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in these cases, the Board finds:

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

2. The labor organizations involved claim to represent certain employees of the Employer.⁴

3. Case No. 9-RM-88: On May 16, 1953, Office Workers requested recognition as the representative of the Employer's "office and clerical employees" at its Paducah, Kentucky, project. The Employer thereupon filed the petition in this case, seeking an election among such employees. 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 in Case No. 9-RM-88.

Case No. 9-RM-87: The Employer-Petitioner seeks an election in this case in a unit consisting of "employees in tool room department [at the Employer's Paducah, Kentucky, project] classified as stock record clerks, storekeepers, and general clerks."

On April 7, 1952, Teamsters and the Employer executed a contract effective to March 14, 1953, recognizing Teamsters

³Although the petitions in these cases were filed after the execution of the current contract between Teamsters and the Employer, Teamsters does not contend that the contract is a bar. In any event, for reasons indicated below, we find that the contract is not a bar.

Because no showing of interest by the labor organizations involved is required in cases initiated by employer petitions, we find no merit to the Employer's request that the Board administratively satisfy itself that the labor organizations involved herein have a sufficient interest in these proceedings. P. R. Mallory & Co., Inc., 89 NLRB 962; Westinghouse Electric Corporation, 89 NLRB 8.

⁴On June 29, 1953, after the close of the hearing, Local Union 900, International Union of Operating Engineers, herein called Operating Engineers, requested that the Employer recognize it as the representative of the Employer's blueprint operators. This request was refused by the Employer because of the pendency of the petition in Case No. 9-RM-88, which the Employer states covers blueprint operators.

The Regional Director for the Ninth Region thereupon advised Operating Engineers that if it wished to intervene in Case No. 9-RM-88, it must submit evidence of its representative interest. Thereupon, Operating Engineers, on July 7, submitted 16 authorization cards to the Regional Office, each of which was dated June 2, which is 6 days prior to the date of the hearing in Case No. 9-RM-88, and stated to the Regional Director, "We also feel that we should have the Engineer Aides also."

As Operating Engineers had acquired a sufficient showing of interest at the time of the hearing in Case No. 9-RM-88 and had not been previously notified of that proceeding, we hereby grant its request to intervene. United Boat Service Corporation, 55 NLRB 671; Heintz Manufacturing Company, 100 NLRB 1521. However, as the blueprint operators, with or without the engineering aides, comprise only a segment of the Employer's clerical employees, we find that they do not constitute a separate appropriate unit, and we shall not direct a separate election for these employees. See The Monarch Machine Tool Co., 98 NLRB 1243; Radio Corporation of America, RCA Victor Division, 96 NLRB 889.

as the representative of its truckdrivers, general warehousemen, and "material checkers." On March 9, 1953, the parties executed a new contract for the same categories of employees, expiring March 14, 1954. On April 6, 1953, Teamsters demanded recognition for the employees described in the petition, whereupon the instant petition was filed.

Teamsters contends that the term "material checkers" as used in its contract embraces the three categories named in the Employer's petition because of identity of job content, and that the Board should so determine. As an alternative position, Teamsters contends that the unit described in the petition is appropriate and that an election be directed therein. Office Workers, the Intervenor in this case, contends that the unit sought is inappropriate and that the only appropriate unit is one including "all office and clerical employees."

Teamsters' first contention does not raise any question concerning representation to be resolved by an election as it merely calls for a Board determination of the coverage of the contract.⁵ There remains for consideration the question whether the petition itself raises a question concerning representation.

The employees described in the petition comprise 81 of the Employer's 166 stock record clerks, 3 of the 164 general clerks, and 5 of the 22 storekeepers. They work in the tool control section. Most of the stock record clerks work in tool cribs dispersed throughout the project. They keep records of tools issued by other employees. The rest of the stock record clerks keep records of inventory and the "surplusing of materials." As to the general clerks referred to in the petition, the record shows only that they fill out "forms and reports." There is no evidence as to the duties of the storekeepers covered by the petition except for testimony indicating that all the storekeepers in the project are supervisors.

There is no evidence in the record to warrant a finding that the foregoing employees constitute a separate appropriate unit. They appear to comprise an arbitrary segment of the Employer's clerical force. Teamsters, in fact, conceded at the hearing that its secondary contention that the unit is appropriate is based on extent of organization, which, under the Act is, in itself, insufficient.⁶

We find, therefore, that no question concerning representation of employees of the Employer exists in Case No. 9-RM-87, and we shall dismiss the petition in that case.⁷

4. The appropriate unit:

⁵For reasons stated in the text below, we find that Teamsters' contract does not embrace the employees described in the petition.

⁶Section 9(c)(5) of the Act.

⁷In view of our disposition of this case, it is not necessary for the purpose of this case to pass on the propriety of the hearing officer's ruling admitting in evidence an arbitration award offered by Teamsters to show the identity in content of the jobs of the material checkers and the stock record clerks.

In Case No. 9-RM-88, the petition seeks an election in a unit of "office and clerical" employees. It appears from the record that the proposed unit at the Employer's Paducah, Kentucky, project includes various categories of office and plant clerks and of nonclerical office employees, with certain stipulated exclusions, which are listed in the appendix attached hereto. Except for such of those employees as may be covered by Teamsters' current contract, these employees are now unrepresented, and are the only unorganized employees on the project. Office Workers agrees that the proposed unit is appropriate. Teamsters, the Intervenor in this case, contends that the unit is inappropriate because it includes certain employees in the tool control section allegedly covered by its current contract with the Employer--namely, stock record clerks, general clerks, and storekeepers.

As in Case No. 9-RM-87, Teamsters contends that its current contract, insofar as it covers "material checkers," includes the stock record clerks, storekeepers, and general clerks in the tool control section, whose jobs are alleged to be identical in content with the material checkers. In support of this contention, Teamsters offered in evidence an arbitration award rendered February 12, 1953, pursuant to the arbitration provision of a contract between Teamsters and M. W. Kellogg Company, which, as a subcontractor of the Employer, conducted various operations on the project, including a "tool control division." Kellogg had adopted the 1952-53 contract between Teamsters and the Employer recognizing Teamsters as the representative of "material checkers." The award found that certain "stock record clerks," not otherwise identified, and certain "area expediters" did the same work as material checkers. Shortly after this award, the Employer took over from Kellogg the tool control operation. Teamsters contends that the work of the employees covered by the award is the same as that which is now performed by the stock record clerks, storekeepers, and general clerks in the Employer's present tool control section, and that the award is therefore binding upon the Employer and the Board as a determination that the three foregoing categories are "material checkers" and, as such, are covered by Teamsters' current contract.⁸ We find no merit in Teamsters' contention that the award is controlling on the Board in determining the appropriate scope of the unit under consideration,⁹ particularly as there is no evidence in the record that the jobs covered by the award are the same as those presently being performed by persons in such unit. Moreover, such award, having been rendered under a contract to which the Employer was not a party, would not be

⁸ The hearing officer refused to admit the arbitration award in evidence. We will, however, treat it as part of the record in the case

⁹ See Guy F. Atkinson, 84 NLRB 88.

legally binding on it. We find, therefore, upon the present record, that Teamsters' contract does not include the stock record clerks, general clerks, and storekeepers in question.¹⁰

Accordingly, we find that a unit consisting of all the Employer's office employees and office and plant clerical employees at its Paducah project, including the stock record clerks and general clerks in the tool control section,¹¹ but excluding any other employees currently represented by Teamsters, constitutes an appropriate unit.

The unit placement of the following categories is in dispute: Engineering aides in the supply department, all storekeepers, and the teletype operators.

The record indicates that the storekeepers and the engineering aides in the supply department recommend the discharge of other employees, and that these recommendations are accorded substantial weight by the Employer. Accordingly, we find that these employees are supervisors, and we shall exclude them from the unit hereinafter found appropriate.

In the course of their duties, the two teletype operators occasionally transmit and receive messages concerning labor relations. Contrary to the contention of the Employer, we find that the occasional dispatch of messages relating to labor matters is not sufficient to constitute these operators confidential employees,¹² as they do not assist persons exercising managerial functions in the field of labor relations. We shall include them in the unit.

Accordingly, we find that all office employees and plant and office clericals at the Employer's Paducah, Kentucky, project, including teletype operators, stock record clerks, and general clerks, but excluding all employees listed in the appendix attached hereto,¹³ all employees presently represented by Teamsters, engineering aides in the supply department, storekeepers, 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.

[The Board dismissed the petition in Case No. 9-RM-87.]

[Text of Direction of Election¹⁴ omitted from publication.]

¹⁰ Teamsters does not expressly contend that its current contract for material checkers bars the petition in Case No. 9-RM-88 insofar as it relates to the employees in the tool control section. Such a contention would not be tenable, in any event, in view of our finding hereabove that such employees are not covered by the contract.

¹¹ We do not include the storekeepers, whom we find below to be supervisors.

¹² American Locomotive Company, Alco Products Division, 92 NLRB 115; The Ohio Steel Foundry Company, 92 NLRB 683, 686; Southern Alkali Corporation, 84 NLRB 120, 126.

¹³ The appendix contains the categories of employees whom all parties agreed to exclude from the unit.

¹⁴ The record does not show whether Teamsters or Operating Engineers desires to appear on the ballot in the unit herein found appropriate. We shall, therefore, permit Teamsters and Operating Engineers to have its name removed from the ballot upon notice to that effect given to the Regional Director within ten (10) days from the date of this Direction of Election.

APPENDIX

Professional employees: Project surgeon, assistant project surgeon, registered nurses.

Confidential employees: File clerk and senior clerk in the labor relations department, secretary to labor relations manager, general clerk for director of plant services, secretary to project engineer, secretary to assistant project engineer, secretary to general construction superintendent, secretary to wage, hour, and salary division, secretary to wage, hour, and salary supervisor, conference reporter, secretary to assistant general construction superintendent (mechanical), executive secretary to project manager, secretary to assistant deputy project manager (engineering), executive secretary to assistant deputy project manager (supply), secretary to director of plant services, secretary to general staff administrator, executive secretary to assistant deputy project manager (construction), executive secretary to assistant deputy project manager (comptroller), security investigator, stenographer acting as secretary to assistant project comptroller, stenographer acting as secretary to project engineer, stenographer acting as secretary to general staff coordinator, stenographer acting as secretary to labor relations manager, and stenographer acting as secretary to wage, hour, and salary division supervisor.

Supervisors: Chief telephone operator, assistant chiefs in time department, machine supervisor in IBM department, key punch operator supervisor in IBM department, chief material checker in the supply department, paymaster assistants in the time section of the accounting department, supervisor in personnel services, assistant chief accountant, assistant internal auditor, chief of mail unit, general clerk in the plan room, coordinators (distribution in the supply department), and assistant chief in the IBM department.

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS
LOCAL UNION NO. 135, affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMERICA, AFL and HOOSIER
PETROLEUM COMPANY, INC. Case No. 35-CC-22. August
7, 1953

DECISION AND ORDER

On April 8, 1953, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the charging party, Hoosier Petroleum