

request is not significant since it appears that this is done primarily as a matter of convenience. Accordingly, we find that the history of collective bargaining has been on the basis of a single bargaining unit of brewing and bottling employees.³ We consider then whether, in the light of the long bargaining history on the broader basis, bottling employees may be severed from the existing unit.

It is not contended, nor does it appear that the bottling employees constitute a craft group. Although the bottling and brewing employees are in separate departments and generally do not interchange with each other, there is frequent interchange of employees at one of the 5 breweries involved. The duties of the employees in both departments are substantially the same as the duties of such employees throughout the brewing industry. Different training is required for the different jobs but the degree of training required to attain proficiency in the work of either department is not extensive and there is no significant difference in the skills of the employees of the 2 departments.

Upon all the facts, we find that the bottling-department employees do not constitute a craft or departmental unit appropriate for the purpose of severance from the larger unit.⁴ We shall, therefore, dismiss the petition.

[The Board dismissed the petition.]

³Goebels Brewery Company, et al., 105 NLRB 698.

⁴Goebels Brewery Company, et al., supra; Anheuser-Busch, Inc., 102 NLRB 800.

WHITING CORPORATION *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA FOR AND ON BEHALF OF SUBORDINATE LODGE NO. 92, A. F. of L., Petitioner. Case No. 21-RC-3173. December 22, 1953

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 George H. O'Brien, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹However, we reverse the hearing officer's ruling permitting International Brotherhood of Electrical Workers, Local 11, to intervene on the basis of a contract covering electricians which it had entered into in 1944 with Spencer and Morris Company. It appears that in 1948 the Employer had purchased certain assets from Spencer and Morris Company and temporarily occupied its plant until the Employer built its own plant. Spencer and Morris Company thereafter continued in business at a nearby location. The Employer never assumed the above collective-bargaining agreement or any other obligation of Spencer and Morris Company. At no time did the Employer recognize the IBEW, nor did the IBEW claim to represent any em-

Upon the entire record in the 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 certain 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.²
4. The appropriate unit:

The Petitioner seeks a unit of all production, maintenance, and repair employees at the Employer's Norwalk, California, plant, including working leadmen and plant clericals,³ but excluding electricians, office clerical employees, professional employees, guards, and supervisors as defined in the Act. The Employer contends that, if an election is directed, the appropriate unit should include the following classification: Leadmen; layout and fitup--A, B, C; machinist; boxer and crater; welder; steel straightener; electrician--maintenance; general maintenance; drill press and machine operator "A"; painter--spray and hand; crane operator; storekeeper; shipping and receiving clerk; production progress clerk; chief stores and receiving clerk; assembler and experienced helper; helper; janitor;

ployees of the Employer before this hearing. In these circumstances, we find that the contract does not establish a sufficient showing of interest among the Employer's employees to entitle the IBEW to intervene herein

We also find that the hearing officer did not commit prejudicial error in promptly correcting himself at the hearing after ruling on the Employer's motion to dismiss and referred the motion to the Board for decision. Moreover, we find, contrary to the Employer's contention, that the hearing officer's inadvertent ruling was not a recommendation barred by Section 9 (c) (1) of the Act nor did he thereby violate Section 11 of the Administrative Procedure Act which is not applicable to Board representation proceedings.

² The Employer contends that the petition should be dismissed for the following reasons that: (1) There is no evidence that any claim of representation was made prior to the filing of the petition; (2) under the 12-month limitation of Section 9 (c) (3) no election can be directed at this time since the petition in the prior representation case (Whiting Corporation, Case No 21-RC-1353) was not finally decided until the dismissal of the petition on February 13, 1953; (3) no substantial showing of interest has been made by the Petitioner; (4) the Petitioner has failed to prove that it was in compliance with the filing requirements of the Act at the time the petition was filed and at the time of the hearing; and (5) the proposed unit is inappropriate.

We find the Employer's contentions to be without merit: (1) A request for recognition is not a prerequisite to the filing of a representation petition (Advance Pattern Company, 80 NLRB 29); (2) as the 12-month limitation of Section 9 (c) (3) runs from the date of the balloting, which in the prior case occurred on October 18, 1950, the petition herein, which was filed on June 18, 1953, is timely (Heekin Can Company, 97 NLRB 783); (3) the Petitioner's showing of interest in a representation proceeding is an administrative matter and is not litigable. Stokely Foods, Inc. (78 NLRB 842). Moreover, we are administratively satisfied that the Petitioner has made a sufficient showing of interest; (4) the Board has also held that whether a labor organization which is required to comply with the filing requirements of the Act has in fact done so is also a question for administrative determination and is not litigable by the parties (Sunbeam Corporation, 94 NLRB 844). Furthermore, we find that the Petitioner was in compliance at all material times; (5) the unit which the Petitioner seeks to represent comprises production, maintenance, and repair employees and is the kind which the Board has traditionally found to be generally appropriate, with certain inclusions and exclusions.

³ The Petitioner amended its petition at the hearing to include working leadmen and plant clericals.

production control assistant; clerk--order department; purchasing assistant; expeditier--purchasing; and material control clerk. The Petitioner apparently does not dispute the Employer's proposed inclusions, except that it would exclude electricians, production progress clerk, material control clerk, chief stores and receiving clerk, "purchasing" employees,⁴ and all production control employees.

The Employer, an Illinois corporation, operates a plant at Norwalk, California, which is involved herein, and one at Harvey, Illinois. It is primarily engaged in the manufacture of heavy equipment and special machinery and in devising and engineering equipment for special needs. The products manufactured by the Employer include cranes, railroad equipment, foundry equipment, tower hammers, equipment for process industries, and various other types of machinery and equipment.

As indicated above, the Employer would include and the Petitioner would exclude the following classifications:

Electricians: The Employer has in its employ 3 electricians, 1 of whom is classified as a leadman. These employees work in the same area alongside production employees. Their work includes the installation of controls, motors, conduit wiring, and electrical fittings and components on equipment manufactured by the Employer. In addition, the electricians perform the necessary electrical maintenance work in the plant. Occasionally, they may also perform nonelectrical work. The electricians have the same general supervision as the other production and maintenance employees and receive the same employment benefits. There is no formal apprenticeship program for electricians or any other employees. The Employer's policy is to advance its employees from the classification of helper to mechanic scale on the basis of experience and ability acquired over a period of time.

In view of the fact that the working conditions and interests of the electricians are similar to those of the production and maintenance employees, and as there is no other union with a substantial showing of interest seeking to represent them as a craft group, we shall, in accord with our well-established practice, include the electricians in the production and maintenance unit.

Production control assistant; production progress clerk; material control clerk; chief stores and receiving clerk: These employees perform functions related to the flow of materials through the Employer's plant. It is the duty of the production control assistant to produce bills of material. His desk is located in the office with the production control supervisor to whom he reports. The production progress clerk maintains a familiarity with the products on the work floor. He is also responsible for checking all materials for discrepancies in

⁴We assume that the Petitioner in using the word "purchasing" had reference to the Employer's classifications of purchasing assistant, expediter--purchasing, and clerk--order department.

production requirements. The production progress clerk spends the major part of his time on the production floor and is described as "the eyes of the general foreman." The material control clerk keeps accurate records of materials received into the plant. He is responsible to the production control supervisor and works in the same general plant area. The chief stores and receiving clerk acts as a leadman for other employees. In this capacity, he directs the employees who issue materials required for the manufacture of Employer's products. It is also his responsibility to see that adequate inventory control is maintained. He reports to the general foreman.

In view of the foregoing, it is apparent that the production control assistant, production progress clerk, material control clerk, and the chief stores and receiving clerk perform functions generally performed by plant clerical employees whom the Board customarily includes in production and maintenance units.⁵ Accordingly, we shall include them in the unit.

Purchasing assistant; expediter--purchasing; clerk--order department: The record does not contain adequate evidence to enable us to determine whether these employees are primarily office clerical, plant clerical, or managerial employees. Under these circumstances, we will permit them to vote subject to challenge.

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production, maintenance, and repair employees at the Employer's Norwalk, California, plant, including electricians, working leadmen; plant clerical employees; layout and fitup--A, B, C; machinist; boxer and crater; welder; steel straightener; electrician--maintenance; general maintenance; drill press and machine operator "A"; painter--spray and hand; crane operator; storekeeper; shipping and receiving clerk; production progress clerk; chief stores and receiving clerk; assembler and experienced helper; helper; janitor; production control assistant; and the material control clerk, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵Cf. Clarostat Mfg. Co., Inc., 105 NLRB 20; East Texas Steel Castings Company, 95 NLRB 1135; Gluck Bros., Inc., 83 NLRB 683; General Electric Company, 81 NLRB 654; Orleans Materials & Equipment Co., Inc., 76 NLRB 351.

⁶The record does not indicate that the production control assistant or the chief stores and receiving clerk possess any supervisory authority.

ANHEUSER-BUSCH, INC., FALSTAFF BREWING CORPORATION, GRIESEDECK BROTHERS BREWERY COMPANY, GRIESEDECK-WESTERN BREWERY COMPANY (HYDE PARK PLANT), and INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DIS-