

achusetts, Works, excluding executives, office clerical employees, professional 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.²

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and PETERSON took no part in the consideration of the above Decision and Direction of Election.

² This unit is essentially the same as that covered by the contracts between the Employer and Intervenor.

DAVID MAX AND COMPANY, PETITIONER *and* INDEPENDENT UNION OF AUTOMATIC GLASS FABRICATION WORKERS *and* LOCAL UNION No. 963 OF BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL

DAVID MAX AND COMPANY *and* INDEPENDENT UNION OF AUTOMATIC GLASS FABRICATION WORKERS, PETITIONER. *Cases Nos. 5-RM-258 and 5-RC-1464. September 13, 1954*

Decision and Direction of Election

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing on the consolidated cases was held before Louis S. Wallerstein, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Local Union No. 963 contends that the RC petition should be dismissed because the Petitioner, herein called the Independent, was illegally assisted by the Employer, and is therefore not a bona fide labor organization, and that the RM petition should be dismissed because the Employer illegally assisted the Independent. We find these contentions to be without merit. In substance, they allege that the Employer has violated Section 8 (a) (2) of the Act, and the Board will not, in a representation proceeding, determine whether the Employer has so violated the Act.² Moreover, the evidence relied upon by Local Union No. 963 in the instant connection is intended to prove the same basic factual allegation of the 8 (a) (2) charge brought by Local Union No. 963 against the Employer in Case No. 5-CA-827, wherein the Regional Director refused to issue a complaint and, on appeal, was sustained in his action by the General Counsel. Under established Board

¹ At the hearing Local Union No. 963 of Brotherhood of Painters, Decorators and Paperhangers of America, AFL, herein called Local Union No. 963, intervened in the RC proceeding, without objection.

² *The Coleman Company, Inc.*, 101 NLRB 120; *Marine Optical Manufacturing Co.*, 92 NLRB 571.

109 NLRB No. 184.

policy, the Board will not, in order to dispose of allegations in representation proceedings, indirectly review the General Counsel's administrative dismissal of unfair labor practice charges by examining the content of charges which the General Counsel, for reasons satisfactory to himself, has thought it proper to dismiss.³

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 employees of the Employer.⁴

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. Both the Employer and the Independent, in their respective petitions, as amended, allege to be appropriate a unit consisting of all employees in the Employer's automatic fabrication department. Local Union No. 963 contends that only a unit comprised of all the employees engaged in handling, processing, and installing glass is appropriate and that therefore the petitions should be dismissed.

The Employer is in the glass business. It is principally concerned with the installation of glass, which it furnishes and cuts, in store fronts, newly constructed buildings, and other structures, and the fabrication of glass jalousie slats or louvers, which it sells to window distributors and manufacturers. The Employer also prepares glass table tops and mirrors to order. The latter operation and the cutting, polishing, beveling, and other work necessary to prepare the glass for outside installation is performed by employees designated as inside glassworkers, of whom there are presently 4; 3 in the Employer's glass shop and 1 in the adjacent bevel shop. The outside installation work is performed by employees known as outside glaziers, presently 28 in number. The glass jalousie louvers are fabricated by the 17 to 20 employees who comprise the Employer's automatic fabrication department, which is the subject of the petitions herein.

Since 1933, the inside glassworkers, consisting of the employees in the glass and bevel shops, who are interchangeable, and the outside glaziers have been represented by Local Union No. 963 under separate contracts. Each of these groups is separately supervised and performs

³ *Everett Plywood & Door Corporation*, 105 NLRB 17.

Nor do we find merit in Local Union No. 963's contention that the Independent's petition should be dismissed because of inaccurate statements therein bearing on the date the Independent assertedly requested, and was denied, recognition by the Employer. For, even assuming the inaccuracy of the statements relied upon by Local Union No. 963, it appears plain that neither that Union nor the Employer was prejudiced thereby. See *Krambo Food Stores, Inc.*, 107 NLRB 1544; *A. E. Nettleton Company*, 64 NLRB 1249.

⁴ Both the Independent and Local Union No. 963 exist in whole or in part for the purpose of bargaining with employers with respect to wages, hours, and other conditions of employment.

different tasks under different working conditions. However, the work of each group is of a skilled nature, requiring a 3-year apprenticeship. There is no interchange between the inside glassworkers and the outside glaziers, except when, because of inclement weather, the outside glaziers are assigned to such work in the glass shop as unpacking glass and squaring salvaged glass.

The automatic fabrication department was established early in 1953, following the installation by the Employer of Weber automatic machines. The 17 to 20 employees in this department, virtually all of whom appear to be new employees hired from outside the plant, are, as indicated above, engaged exclusively in fabricating glass jalousie louvers, an operation different from and independent of the operations carried on by the other employees. Of the employees in this department, all of whom are presently unrepresented,⁵ only the two master mechanics perform work which requires special skill. The other employees in the department are engaged in such work as operating the Weber machines, simple glasscutting, packing and unpacking boxes, and operating a forklift truck. These employees and the inside glassworkers work on the same floor but are segregated from each other. The automatic fabrication department has its own supervisor, who has the authority to hire employees for work therein, but its employees share the same ultimate supervisor as the other employees under discussion. All the employees are hourly paid and work virtually the same number of hours, and all the inside glassworkers and automatic fabrication department employees regularly punch the same time clock. When the employees in the glass shop have insufficient work of their own to do, they are detailed to cutting glass for use on the Weber machines. There has been no interchange of any kind between the outside glaziers' group and the automatic fabrication department.

Upon the entire record, particularly the evidence to the effect that the automatic fabrication department is in the nature of a separate plant performing an independent function under separate immediate supervision, we find that the employees of that department may constitute a separate unit. On the other hand, because we are of the opinion that the employees in the automatic fabrication department and the inside glassworkers' group have a sufficient community of interest to be joined in a single unit, and in view of Local Union No. 963's desire to represent the automatic fabrication department as part of a larger unit, we find that the employees in that department may, if they so desire, be added to the existing unit of inside glassworkers currently represented by Local Union No. 963. Ac-

⁵ Although on February 20, 1954, the Employer and a committee of employees entered into a bargaining contract covering the employees in the automatic fabrication department, it is not contended, and the record does not show, that the automatic fabrication department is presently represented by any bargaining agent.

cordingly, we shall make no final determination with respect to the employees in the automatic fabrication department at this time, but shall first ascertain the desire of these employees as expressed in the election directed herein. We shall direct an election among the following employees: All employees in the automatic fabrication department at the Employer's Washington, D. C., establishment excluding all other employees and supervisors as defined in the Act.⁶

We shall place the names of both labor organizations involved herein on the ballot. If a majority of the employees in the above voting group vote for the Independent, they will be deemed to have indicated their desire to constitute a separate appropriate unit which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority vote for Local Union No. 963, they will be taken to have indicated their desire to be constituted a part of the existing inside glassworkers' unit presently represented by Local Union No. 963.

The Regional Director conducting the election directed herein is instructed to issue a certification of representatives or of results of election in accord with the foregoing.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

⁶ See *Ware Laboratories, Inc.*, 98 NLRB 1141, and *R. P. Scherer Corporation*, 95 NLRB 1426. *Packard Motor Car Co.*, 94 NLRB 1550, and *American Bakeries Co.*, 107 NLRB 1529, upon which Local Union No. 963 relies to support its position, are plainly distinguishable on the facts.

ARMOUR LEATHER COMPANY, A DIVISION OF ARMOUR AND COMPANY and
CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER. *Case No.*
4-RC-2381. September 13, 1954

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 Herbert B. Mintz, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 organizations involved claim to represent certain employees of the Employer.