It is therefore irrelevant whether, as the Intervenor contends, the parties intended the contract to take effect by May 21.[5]

On the record as a whole, we are not persuaded that a sufficiently complete and final signed agreement between the Employer and the Intervenor came into existence before the filing of the petition on May 21.[6] We therefore 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. Pursuant to agreement of the parties, we find that all offset production employees at the Employer's Midway, Wisconsin, plant, excluding office clerical employees, guards, professional employees, 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] We are unable to agree, moreover, that the parties manifested any such intent. The rider clearly says at the beginning: "The following changes and additions are to be made to the above-named Agreement, such changes to become effective the ____ day of ____, 1952." Wilterding testified. "To me it was not an agreement until . . . the day we met to sign it, and on that day at the time we affixed our several signatures, I put myself, I wrote in May 19 as the effective date. . . ." Moreover, the Intervenor apparently did not consider that a complete contract had been reached until May 22, for it again considered and approved the entire contract on May 17, submitted it to a further referendum on May 21, and held another "Meeting on Contract Negotiation" with the Employer on May 22.

[6] We thus find it unnecessary to decide whether telegrams from the Petitioner received by the Employer on May 16 and 20 were themselves sufficient to preclude the contract from being a bar.

A. O. SMITH CORPORATION, AIR FRAME COMPONENT DIVISION[1] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,[2] PETITIONER

A. O. SMITH CORPORATION, AIR FRAME COMPONENT DIVISION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL,[3] PETITIONER.

Cases Nos. 3–RC–980 and 3–RC–989. October 7, 1952

Decision and Order

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before

[1] The name of the Employer appears as amended at the hearing.
[2] Herein called UAW–CIO.
[3] Herein called IAM.

John C. Weld, 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 these cases to a three-member panel [Chairman Herzog and Members 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.

3. No question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The IAM seeks a unit composed of all production and maintenance employees at the Employer's Rochester, New York, plant. The UAW–CIO seeks a unit composed of a group of maintenance and nonproduction employees. The Employer contends that both petitions are premature, and, in the alternative, that the UAW–CIO unit is inappropriate.

The Employer took possession of the plant here involved in August 1951, for the purpose of manufacturing a specific aircraft component for the Boeing Aircraft Corporation. Prior to August 1951, the plant had been used as a grain storage warehouse. At the time of the hearing, which was held on June 10, 1952, the Employer had approximately 220 production and maintenance employees, who were engaged in plant rehabilitation, machine rehabilitation, and other activities necessary to convert the plant to its intended use, and also in the production of a test model of the proposed product. The Employer estimated that the conversion of the plant was approximately 30 percent completed and that such conversion would be completed, and production for shipment would commence, sometime during the first quarter of 1953. The date for commencing such production depends, however, upon the maintenance of present delivery schedules for machinery and satisfactory completion of the test model. At that time the Employer expects to have an additional 1,000 production and maintenance employees, which it expects to hire at a rate of 135 to 150 a month between the date of the hearing and the date of completion.

On June 1, 1952, there were 55 employees working on rough machining and several other employees of different classifications working in what will ultimately be the production department. The Employer plans to hire from 800 to 850 additional production employees by the first quarter of 1953. There are many contemplated phases of production and production classifications for which no employees have yet been hired. These include heat treating, annealing, plating, and final machining. Some phases of production will depend upon the results

of experimental work now being conducted. Also, although welders have been hired for training, there are none as yet ready to work in final welding.

The unit proposed by UAW–CIO would include employees in the toolroom, the pattern shop, the templet shop, and building and machine maintenance employees, all of whom would also be included in the unit proposed by IAM. On June 1, 1952, there were approximately 120 employees in this proposed unit. The Employer expects to hire 150 to 200 more employees in these categories by the time the plant is completed. The employees sought by UAW are presently performing few of the functions which ultimately will be required of them when regular production begins. At present the toolroom employees are making tools and dies to be used in production and are also fabricating parts for the test model. Some production workers are working in the toolroom area on similar work due to a lack of machines in the production area. Welders assigned to the toolroom are welding test fixtures which are being made there. After regular production commences, the toolroom employees will be assigned to maintenance and repair of tools and dies; production employees and welders will be moved out of the toolroom into production. The Employer anticipates that the use of plastics and special alloys may necessitate the addition of job classifications in the toolroom. Employees now engaged in plant rehabilitation and machine installation will later be assigned to building maintenance work. Other employees, now engaged in rebuilding and overhauling machines, will later be confined to repairing machines. Due to specialized equipment which will be required for production,[4] the Employer anticipates unique maintenance problems which may require additional classifications in the maintenance department. In addition, the Employer anticipates the transfer of some employees from these departments to production departments at the time that production commences.

It is clear from the foregoing that the duties of the present plant complement have not been stabilized, and that it will, moreover, be necessary for the Employer, before it can begin its regular production operations, to hire large numbers of employees for new job classifications in its production and maintenance operations. Under these circumstances, we find that both petitions in this case are premature, and they will be dismissed[5] without prejudice to the subsequent filing of other petitions at a more appropriate time.

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[4] Among equipment needed are large presses, special furnaces and a rolling mill being specially designed by the Employer for this operation. Although the Employer was not at liberty to disclose the exact nature of its operation for security reasons, it indicated that it is highly novel, and will present a number of unique problems not hitherto encountered.

[5] *Coast Pacific Lumber Co.*, 78 NLRB 1245; *A. O. Smith Corporation*, 97 NLRB 1570. As we are dismissing the petition of UAW on other grounds, it is not necessary to, and we do not, pass upon the Employer's contention that the unit sought by UAW is inappropriate.

Order

IT IS HEREBY ORDERED that the petitions in Cases Nos. 3–RC–980 and 3–RC–989 be, and they hereby are, dismissed.

FRANK SMITH & SONS *and* AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 202, AFL, PETITIONER. *Case No. 16–RC–1092. October 7, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Charles Y. Latimer and James R. Webster, successive hearing officers. The hearing officers' rulings made at the hearings 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 Murdock and Peterson].

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

The Employer is a Texas partnership, engaged in the business of growing, processing, and selling poultry. Substantially all of the Employer's purchases and all of its sales[1] are made within the State of Texas. All but approximately $25,000[2] of the sales to Safeway Stores, Inc., were made to its retail outlets. Of the total sales to Furr Food Stores, only $7,452.33 was poultry consigned to New Mexico stores.[3] The remainder of the sales to Furr and those to A. & P. Tea Company are not broken down in the record, and there is no indication that these sales were made to other than retail outlets of multi-state chains. Nor does the record show that the Texas operations of Furr and A. & P., apart from their retail outlets, engage in any interstate transactions. Moreover, the record does not demonstrate that any of these retail stores, either independent or chain, sell goods outside the State of Texas in the amount of $25,000 annually.

Under the formula laid down in the *Hollow Tree Lumber Co.* case,[4] the Board has excluded sales to local units operating as integral parts

[1] The record shows that the Employer's principal sales during the past 12 months have been made to the following retail chain distributors of food products; Safeway Stores, Inc., $858,000; Furr Food Stores, $150,000; A. & P. Tea Company, $100,000. The remainder of the sales were made to restaurants and retail stores.

[2] This sum represents sales to Safeway's warehouse in El Paso, Texas, which admittedly handles goods destined for out-of-State shipment valued in excess of $25,000 a year.

[3] Furr directly shipped the poultry from such sales to its New Mexico retail outlet.

[4] 91 NLRB 635.