

she also performs the duties of a sales clerk on occasion. In accordance with our usual practice for retail stores, we will include her in the unit.⁶

We find that the following employees of the Employer at its Miami Beach store constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All soda dispensers, food workers, busboys, dishwashers, soda porters, salesclerks, stock clerks, bookkeeper, and porters, excluding the store manager, assistant store managers, soda managers, assistant soda managers,⁷ pharmacists, supervisors, and guards within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

⁶ *Belk's Department Store of Savannah, Ga., Inc.*, 93 NLRB 729

⁷ The record shows, and the parties agree, that the excluded managers are supervisors within the meaning of the Act. It appears that certain sales clerks are also designated as managers of the departments in which they work. They have no supervisory authority, and no one contends that they are supervisors. We find that they are not supervisors within the meaning of the Act, and they are included in the unit.

WALES-STRIPPIT CORPORATION *and* LODGE 1691, DISTRICT LODGE 76,
INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER.
Case No. 3-RC-1447. November 19, 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 Murray S. Freeman, 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 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 for the following reasons:

The Employer contends that its 2-year contract, entered into on September 1, 1953, with Workmen's Security Union, an independent labor organization, is a bar to this proceeding. The Petitioner contends that, as the contracting union is defunct and, therefore, incapable of administering the agreement, the contract is not a bar.

The record discloses that on August 3, 1954, pursuant to posted notices, a regular meeting of Workmen's Security Union was attended

by 60 employees including the 4 officers.¹ After the membership voted 58 to 1 to dissolve the Workmen's Security Union, a representative of the Petitioner, who had previously been invited, arrived at the meeting, addressed the group, and departed.² At this point, the employees voted, 58 to 1, to affiliate with the Petitioner. Thereafter, by acclamation, the four officers of the Workmen's Security Union were elected to corresponding positions with the Petitioner. Approximately a week later, the officers of the new organization applied to the Petitioner for a charter which was subsequently issued, establishing the organization as Local 1691.³ The record discloses that since that time, the Employer has held the employees' checked off dues in escrow; that no meetings of the Workmen's Security Union have been held; that no grievances have been processed; that all but 1 or 2 of the employees have signed cards designating the Petitioner as their representative; and that no representative of the dissolved union has attempted to administer the contract in any manner.⁴ Moreover, although the Workmen's Security Union was served with notice of the hearing, it did not attempt to intervene, nor did it appear at the hearing.

In view of the foregoing, we are of the opinion that Workmen's Security Union is defunct, and therefore, not capable of administering its contract with the Employer. Accordingly, we find that the existing contract does not bar a representation election at this time.⁵

The Employer contends that, if the Board finds the contract no bar to an election, the Petitioner should, in the event it is certified, be compelled to administer the agreement. We deem it unnecessary to pass upon this issue in a representation proceeding for the reasons set forth in *Boston Machine Works Company*.⁶

4. The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees of the Employer at its North Tonawanda, New York, operations, excluding office clerical

¹ There are approximately 146 employees in the production and maintenance unit. Normal attendance at these meetings had approximated 25 employees.

² No contention is made, nor is there any evidence tending to show that the Petitioner took any part in the dissolution vote.

³ The charter was paid for out of the old Workmen's Security Union treasury.

⁴ In fact, both parties to the proceeding concede that the Workmen's Security Union is defunct.

⁵ *Standard Brass Manufacturing Company*, 101 NLRB 1032 at 1033; *Filtrol Corporation*, 109 NLRB 1071; *Universal Utilities, Inc.*, 108 NLRB 58; and cases cited therein. But see also, *Charles Beck Machine Corporation*, 107 NLRB 874.

⁶ 89 NLRB 59. See also, *Arthur C Harvey Company*, 110 NLRB 338. While agreeing with the majority decision here, Chairman Farmer deems the issue presented substantially different from that of the *Boston Machine* case, and therefore finds it unnecessary now to express any opinion as to the rule of that decision. Members Rodgers and Beeson believe that, under the circumstances of this case, if the Petitioner is certified as a result of the election directed herein, it should be deemed to assume the rights and obligations conferred by the existing contract.

employees, guards, professional employees, and supervisors as defined in the Act.⁷

[Text of Direction of Election omitted from publication.]

⁷ The parties stipulated to the appropriateness of the unit.

MORRIS AND HORNER, INC. *and* LOCAL 900, INTERNATIONAL UNION OF OPERATING ENGINEERS, A. F. L. *Case No. 10-CA-1747. November 22, 1954*

Decision and Order

On December 10, 1953, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices alleged in the complaint and recommended that it cease and desist therefrom and take certain affirmative remedial action. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed in that respect. Thereafter, the Respondent filed exceptions and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the record in the case, and finds merit in the Respondent's exception to the assertion of jurisdiction over its operations.

The record discloses¹ that the Respondent is a Tennessee corporation having its principal office and place of business at Clinton, Tennessee, where it is engaged in the sale and repair of automobiles and trucks. It operates under a franchise agreement from the Ford Motor Company. During a representative period beginning June 3, 1952, and ending May 3, 1953, the Respondent purchased motor vehicles, parts, and accessories in the approximate value of \$245,000 which were shipped to its place of business from points outside the State of Tennessee. During the same period the Respondent sold motor vehicles, parts, and accessories in the approximate value of \$19,400 which were shipped from its place of business to points outside the State.

Upon the foregoing facts we find that it will not effectuate the policies of the Act to assert jurisdiction over the Respondent, in view

¹ The facts as to the Respondent's business originally appearing in the record have been supplemented by a stipulation entered into by the parties since the hearing and made a part of the record herein.