All production and maintenance employees, including plant clericals,[3] but excluding office clericals, professional employees, guards, and supervisors as defined in the Act.

5. Eligibility:

The UAW-CIO contends that all of the laid-off employees at the Beaufait, Epworth, and Boulevard plants should be permitted to vote in any election directed. The Employer stated at the hearing that it intended to recall all laid-off employees at the Beaufait and Epworth plants by the time that all of its operations were consolidated into a single operation at the Boulevard plant. As these laid-off employees have a reasonable expectancy of being recalled in the near future, we shall, in accordance with Board practice, permit them to vote in the election.[4]

The Employer also stated at the hearing that it intended to hire by the time the consolidation was completed most or all Boulevard plant employees whom Parker-Wolverine had laid off prior to the Employer's acquisition of the Boulevard plant. As aforesaid, the Employer in this case is not a successor to Parker-Wolverine and did not assume any obligations concerning the employment of the latter's employees, whether in laid-off status or not. Instead, it hired as new employees upon individual application only those employees then working at the Boulevard plant. Although the Employer intends to hire the employees laid off by Parker-Wolverine in the near future, they are not employees of the Employer until it has actually hired them. We find that the employees who were in laid-off status at the Boulevard plant when it was acquired by the Employer are not eligible to participate in the election unless they are hired and begin work prior to or during the payroll period immediately preceding the date of the Direction of Election herein.[5]

[Text of Direction of Election omitted from publication.]

[3] The Employer, UAW-CIO, Local 174, and Local 189 would exclude plant clericals from the unit However, in accordance with usual Board practice, we shall include them. *Stauffer Chemical Company*, 108 NLRB 1037.

[4] *M & S Morenci Corporation*, 100 NLRB 1114 at 1115.

[5] *J. Halpern Company*, 108 NLRB 1142.

A. O. SMITH CORPORATION, KANKAKEE WORKS *and* OFFICE EMPLOYEES INTERNATIONAL UNION, A. F. L., PETITIONER

A. O. SMITH CORPORATION, KANKAKEE WORKS *and* OFFICE EMPLOYEES INTERNATIONAL UNION, A. F. L., PETITIONER. *Cases Nos. 13-RC-4153 and 13-RC-4201. March 21, 1955*

Decision, Direction of Election, and Order

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

Virginia M. McElroy, 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 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. In Case No. 13–RC–4153, Petitioner seeks a unit of accountants, and in Case No. 13–RC–4201, Petitioner seeks a unit of all office and clerical employees, including accountants. At the hearing and in its brief, Petitioner urged as its primary position the broader unit, but if an election is barred in such unit, then as an alternative position, it would seek to represent the accountants. The Employer and the Intervenor, Technical Engineers Association (Ind.), urged that the unit of accountants is inappropriate and further maintained that an election in the broader unit is barred because of a valid existing contract covering the employees in this unit.

No evidence was presented to warrant a finding that the accountants are professional employees or that they constitute a separate appropriate unit apart from the office employees. Accordingly, we shall dismiss the petition in Case No. 13–RC–4153 and consider on the merits the petition for the broader clerical unit in Case No. 13–RC–4201.

As indicated above, the Employer and the Intervenor contend that their contract executed in 1953 was automatically renewed and constitutes a bar to an election in the broader unit. In support of their position, both the Employer and the Intervenor contend that the Intervenor's notice of desired changes, relied upon by the Petitioner to prevent automatic renewal of the contract in the broader unit, applied to a different contract and not to the clerical employees' contract, which was therefore automatically renewed. The determination of this issue requires a consideration of the Employer's bargaining history.

The record discloses that on November 19, 1954, the date of the Intervenor's notice of desired changes,[1] the Intervenor had two collective-bargaining contracts with the Employer, identical in form and having the same automatic renewal provision. One of these contracts covered the unit of clerical employees involved herein,[2] and the other

[1] This notice reads as follows: "In conformity with the terms of the Labor-Management Relations Act and Article XVIII of our contracts, we hereby notify you that we desire to effect changes in the contract existing between A. O. Smith Corporation, Kankakee Works and Technical Engineers Association. We shall be happy to meet and confer with you at your convenience for the purpose of negotiation on the contract."

[2] The bargaining unit covered all employees performing typing, clerking, stenography, office machine operations, checking and expediting in the following departments: production control, general accounting, purchasing, operations control, research and development, plant engineering, methods, and tooling and industrial engineering

a unit of technical employees.[3] The letter or notice of November 19 as set forth above, does not indicate which of the two identical contracts it was intended to cover. However, it appears to us that the conduct of the parties leaves little doubt that the letter referred to the office employee unit. Thus, at the hearing on the petition for technical employees as noted above, the Intervenor's failure to appear and intervene, despite its receipt of the notice of hearing, indicates an abandonment of its contractual interest in that group. Accordingly, in view of such abandonment, it would appear that the Intervenor must have intended its letter of November 19 as applicable to its only remaining contract with the Employer, namely, the contract covering the unit of clerical employees.[4]

This conclusion is supported by other conduct on the part of the Intervenor. For instance, it is to be noted that as late as December 19, 1954, proposed changes in the clerical contract were discussed at a meeting of the Intervenor's clerical unit, and that later, on December 29, in a letter by the Intervenor's public relations director, reference is made to preparation for the proposed new contract negotiations to take place the following month. The Intervenor conceded at the hearing and in its brief that it had intended to open the clerical contract, but that it was only through an inadvertence that this was not done. Furthermore, the Intervenor also conceded at the hearing that it was not until January 4, 1955, when the instant petition was filed that it first became aware of the inadvertence which had renewed the clerical contract. It thus appears that the Intervenor utilized the ambiguity in the November 19 letter as the basis for its claim in this proceeding that the clerical contract had been renewed. In so doing, it is seizing upon a technicality for the purpose of vitiating the effect of its own letter. Under all circumstances, we are persuaded upon the evidence in the record that the letter of November 19 was intended to open the contract for the unit of office clerical employees. Accordingly, we find that the contract is not a bar to the instant proceeding.[5]

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[3] The history of the technical unit indicates that on October 1, 1954, the AFL Technical Engineers filed a petition (Case No. 13–RC–4104) for the technical employees and that a hearing on that petition was held October 26, 1954. In that proceeding, the Employer took the position that the contract covering the technical employees would expire by its own terms on January 25, 1955 The present Intervenor made no appearance and did not intervene, although served with a notice of hearing in the proceeding An election in the technical unit was directed by the Board on December 6, 1954 Thereafter, on December 16, 1954, the Intervenor petitioned the Board for a rehearing on the basis of its unexpired contract and relying upon the letter of November 19, 1954, hereinabove referred to. The petition for rehearing was denied but the Intervenor was accorded a place on the ballot if it so requested. The evidence indicates that no such request was made. The AFL petitioner won the election and was thereafter certified as bargaining representative for the technical unit on January 18, 1955

[4] We find no merit in the Intervenor's argument that because the November 19 letter was cited in its petition for rehearing in the technical unit proceeding, described above, as evidence of its contract interest, that this is a determination by the Board of the contract-bar issue in the clerical unit proceeding involved herein. The contract-bar issue was not litigated in the technical unit case.

[5] See *Henry C Grabowsky, trading as Diamond Printing Company*, 109 NLRB 112.

A question affecting commerce exists concerning the representation of the employees of the Employer in Case No. 13–RC–4201 within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.[6]

4. The appropriate unit:[7]

We find that all office and clerical employees including accountants employed at the Employer's plant at Kankakee, Illinois, excluding all other employees, professional employees, guards, and all 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.]

[The Board dismissed the petition in Case No. 13–RC–4153.]

[6] The Petitioner also contends that the contract in issue is not a bar because the unit covered is not appropriate in that a number of clerical employees in certain departments are excluded We find no necessity for considering this question because, as noted below, the parties appear to agree that the unit in the instant petition is appropriate and for the further reason that we have found the contract not a bar on other grounds.

[7] The record shows that there is no disagreement between the parties as to the appropriate unit

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TENNESSEE COACH COMPANY *and* DIVISION 1490, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL.[1] *Case No. 10–CA–1918. March 22, 1955*

Decision and Order

On September 2, 1954, Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the Union filed exceptions to the Intermediate Report and supporting briefs.[2]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exception and briefs, and the entire record in this case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[3]

[1] Herein called the Union.

[2] The request of the Respondent for oral argument is denied as the record and the briefs adequately set forth the position of the parties.

[3] The Trial Examiner based his finding of violation of Section 8 (a) (5) of the Act on the rule set forth in *The Baker and Taylor Co*, 109 NLRB 245. While that case properly states the rule, we base our finding on the more recent United States Supreme Court decision in *N. L R B.* v. *Ray Brooks*, 348 U. S 96, finding it unnecessary to distinguish inconsistent circuit court cases as the Trial Examiner did.