

order is received it is filled by a counterman. The customer is billed by a shipping and billing clerk. The order is prepared for delivery by the wrappers and delivered by the delivery boys. There is no previous history of bargaining affecting any of the employees involved in this proceeding. On the basis of previous Board decisions⁴ and the record herein, and as no union seeks to represent the retail store employees on any other basis, we believe that a single unit, including the retail store employees, is appropriate.

Accordingly, 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 and maintenance employees at the Employer's Larimer and Market Streets, Denver, Colorado, plants, including truckdrivers, the janitor, shipping and billing clerks, countermen, wrappers, and delivery boys, but excluding office and clerical employees, guards, and supervisors as defined in the Act.

5. The Employer contends, in effect, that no joint bargaining is intended by the joint petitioners and opposes their placement on the ballot as a single joint representative. However, such placement on the ballot is consistent with Board precedent.⁵ In the event that the joint petitioners are successful in the election hereinafter directed, they will be certified jointly as the bargaining representative of the employees in the entire unit. The Employer may then insist that the Petitioners bargain jointly for such employees as a single unit.

[Text of Direction of Election omitted from publication.]

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

⁴ Cf. *Witwer Grocery Company*, 110 NLRB 951; *Rheem Manufacturing Company*, 110 NLRB 904, and cases cited therein; *J. J. Moreau & Son, Inc.*, 107 NLRB 999 and cases cited therein.

⁵ *The Stickless Corporation*, 110 NLRB 2202; *Sonoco Products Company*, 107 NLRB 82; *Webb-Lynn Printing Company*, 95 NLRB 1488.

American Can Company and United Steelworkers of America, CIO,¹ and International Association of Machinists, AFL,² Petitioners. *Cases Nos. 10-RC-3014 and 10-RC-3025. April 28, 1955*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions filed under Section 9 (c) of the National Labor Relations Act, a hearing³ was held before Allen Sinsheimer, Jr.,

¹ Herein called the Steelworkers.

² Herein called the IAM.

³ Although the cases were not formally consolidated by the General Counsel, they were heard together as if consolidated by agreement of the parties. For the purposes of this decision, the cases are hereby consolidated.

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.

3. Questions affecting commerce exist 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. The Steelworkers, in Case No. 10-RC-3014, amended their petition at the hearing to seek a unit of all production and maintenance employees at the Employer's Plymouth, Florida, plant, including the shipping employees, but excluding all office, salaried clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act. The IAM, in Case No. 10-RC-3025, seeks a unit of all maintenance employees. The Employer and the Steelworkers contend that a production and maintenance unit is the only appropriate unit.

The Employer at its Plymouth plant, the only plant involved in this proceeding, manufactures metal containers. There is no history of collective bargaining at the plant.⁴

The maintenance department is under the supervision of the master mechanic, the assistant master mechanic, and the maintenance foreman. There are about 21 employees in this department, classified as tool- and die-makers, machinists, electricians, millwrights, and truck mechanic.⁵ Although a majority of the work of the maintenance employees is performed in the production area, maintenance department supervisors direct the manner in which the work is to be performed. The maintenance employees keep their tools and equipment in separate shops apart from the production area. There is a formal

⁴In a prior case involving this same plant, *American Can Company*, 10-RC-2589 (not reported in the printed volumes of Board Decisions and Orders), the parties agreed that a production and maintenance unit was appropriate for the purposes of collective bargaining. The Board therein found appropriate a production and maintenance unit and an election was held on February 4, 1954. Neither union won the election and no bargaining resulted therefrom. Contrary to the Employer's contention, we do not regard the IAM's participation in that case as an intervenor, nor its appearance on the ballot in the election, as precluding the propriety of its present request to be certified as representative of the maintenance employees. See *Mock, Judson, Voehringer Company of North Carolina, Inc.*, 110 NLRB 1265. But cf. *Mills Industries, Inc.*, 108 NLRB 282.

⁵There are a number of employees in the production department who perform some maintenance and repair work. However, these employees are permanently stationed in the production area, and each employee is assigned to a certain number of machines. Their tools and equipment are located in the production area, and they are all under the continuous supervision of production foremen. It appears that a primary function of these employees is to adjust the production machinery for the different types of containers produced. Under these circumstances we shall include these employees in the production voting group rather than in the maintenance department voting group hereinafter set forth.

apprentice program for most maintenance department job classifications, although there are at present no maintenance employees in the apprentice classification. Production employees have a different type training program from the maintenance department employees and there is no evidence of interchange between the two departments.

We are of the opinion that the employees in the maintenance department possess interests in common, distinct from those of the production employees, which are sufficient to warrant their original establishment in a separate unit where, as here, there is no collective-bargaining history on a broader basis. We find, therefore, that the employees in the maintenance department may constitute a separate appropriate unit, if they so desire.⁶ An overall production and maintenance unit may also be appropriate.

We shall make no final unit determinations at this time, but shall direct that the questions concerning representation be resolved by separate elections among the following groups of employees at the Employer's Plymouth, Florida, plant:

(a) All production department employees, including the shipping employees, but excluding all office, salaried clerical employees, professional employees, the maintenance department employees included in voting group (b), guards, and supervisors as defined in the Act.

(b) All maintenance department employees, excluding supervisors as defined in the Act, and all other employees.

If a majority of the employees in voting group (b) vote for the IAM, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Regional Director conducting the elections herein is instructed to issue a certification of representatives to the IAM for such unit, which the Board, under the circumstances, finds appropriate for the purposes of collective bargaining. If a majority of the employees in voting group (b) vote for the IAM and if a majority of the employees in voting group (a) vote for the Steelworkers, the Regional Director is instructed to issue a certification of representatives to the Steelworkers for a separate unit of production employees, which the Board, under the circumstances, finds appropriate for the purposes of collective bargaining.

However, if a majority of the employees in voting group (b) do not vote for the IAM, such group will be appropriately included in the same unit with the employees in voting group (a) and their votes will be pooled with those in voting group (a).⁷ The Regional Director con-

⁶ *The Ruberoid Company*, 109 NLRB 257. See *E I Dupont de Nemours & Company (Savannah River Plant)*, 111 NLRB 649.

⁷ If the votes are pooled, they are to be tallied in the following manner. The votes for the union seeking a separate unit of maintenance employees shall be counted as valid votes, but neither for nor against the union seeking to represent the more comprehensive unit; all other votes are to be accorded their face value, whether for representation by the union seeking the comprehensive group or for no union. See *Courtaulds (Alabama) Inc.*, 109 NLRB 571, footnote 8.

ducting the elections is instructed to issue a certification of representatives to the Steelworkers if that labor organization is selected by a majority of the employees in the pooled group, which the Board in such circumstances finds to be a single unit appropriate for the purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

The Brewer-Titchener Corporation Crandal-Stone Division and International Association of Machinists, AFL, Petitioner. Case No. 3-RC-1481. April 28, 1955

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 John W. Irving, 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 herein claim 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.

The Employer and the Intervenor, Federated Refrigeration & Automotive Workers Association, contend their current contract constitutes a bar to this proceeding. The Employer's motion to dismiss on this ground was referred to the Board by the hearing officer. For reasons hereinafter stated, we deny the motion.

On December 7, 1954, the Employer received a letter from the Petitioner advising that a majority of the employees at the Binghamton, New York, plant had designated it as their bargaining representatives and requesting recognition. The Employer replied on December 14, 1954, that it had a contract with a duly certified bargaining agent which contract did not expire until October 1, 1955. The Petitioner filed the petition herein on December 14, 1954.

A prior contract between the Intervenor and the Employer expired on October 1, 1954, and the parties entered into an agreement extending its terms until negotiations were concluded and an agreement consummated and began negotiations for another contract. Mr. Sweetland, the Employer's divisional manager, one of the signatories to the current contract, testified that the letter from Petitioner was received by him on December 8 before he signed the contract in ques-