

one occasion Nicolas asked if he had signed a card in the Union. It is not violative of the Act for a foreman to engage in a casual discussion of organizational activity with an employee. Normally, however, the Board would hold any interrogation as to an employee's union affiliation to be violative *per se*. *Standard-Coosa-Thatcher Company*, 85 NLRB 1358. Here, however, the questioning appears to have occurred during a single conversation and implied no threat of reprisal, force, or promise of benefit. Consequently, it is my conclusion that in neither of these incidents did the Respondent, through Nicolas, violate the Act. *N. L. R. B. v. Associated Dry Goods Corporation, supra*.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent's agents participated in the preparation and circulation of an antiunion petition among its employees and threatened the dismissal of an employee for engaging in concerted activity, I shall recommend that the Respondent be ordered to cease and desist therefrom and from like or related conduct. Further, because of this demonstration of the willingness of the Respondent's agents to resort to unlawful methods to counteract an attempt by the employees to achieve self-organization through a labor organization of their own choosing, the commission of other unfair labor practices may be anticipated. It will therefore be recommended that the Respondent be ordered to cease and desist from in any manner infringing upon the rights guaranteed its employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. The Respondent is, and at all times relevant herein, was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. The Teamsters and the Machinists are labor organizations within the meaning of Section 2 (5) of the Act.
3. All employees of the Respondent in its service, parts, and used car departments, exclusive of office clericals, plant clericals, salesmen, guards, professional employees, and supervisors, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.
4. By the participation of Foreman Nicolas in the preparation of an antiunion petition and the acquiescence of Nicolas in the use by employees of company time and property for the circularization of this petition and by the threat of discharge conveyed in the remarks of Service Manager Lloyd to Hilliker, as found above, the Respondent engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act. Further, these aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.
5. The Respondent has not engaged in any violations of the Act, as alleged in the complaint, other than those set forth in the preceding paragraph.

[Recommendations omitted from publication.]

**American Engineering Company and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 35, CIO, Petitioner.** *Case No. 4-RC-2526. April 1, 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 Joseph A. Weston,

hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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. The Employer is engaged in the business of manufacturing stokers, hydraulic pumps, and marine equipment. It operates two plants in Philadelphia, Pennsylvania. These plants, herein termed plant No. 1 and plant No. 2, are located about 4 miles apart. Before October 1953, virtually all of the Employer's office clerical employees were located at plant No. 1. During October 1953, about six of these office clerical employees were moved from plant No. 1 into a new office building at plant No. 2. During October 1954, about 30 more of the Employer's office clerical employees were moved from plant No. 1 into the new building at plant No. 2. Approximately 30 office clerical employees remained at plant No. 1.

The Petitioner, which represents a production and maintenance unit at plant No. 1, was certified by the Board in 1946 as the collective-bargaining representative for a unit of all office clerical employees at plant No. 1. It contends that, by virtue of this certification and its current contract with the Employer, it continues to represent the office clericals who have been moved from plant No. 1 to plant No. 2. The Petitioner's current contract, like its 1946 certification, refers only to the plant No. 1 office clericals. The Petitioner argues that this is not significant because at the time of the certification there were no office clerical employees located at plant No. 2. It asks that the Board treat its petition as a request to "clarify or amend" its 1946 certification to include also office clerical employees located at plant No. 2.

The Intervenor was certified in 1946 for a unit of production and maintenance employees, "including factory clerical employees," at plant No. 2. It has continued bargaining, to date, for such a unit. The Intervenor contends that the office clerical employees who were moved from plant No. 1 to plant No. 2 are within the coverage of its current contract, and that this contract therefore serves as a bar to the instant petition. In support of its contention the Intervenor argues that an appendix which was added to its 1952-1953 contract was intended to include within the contract's coverage any office

---

<sup>1</sup> The hearing officer permitted Federal Labor Union No. 24115, AFL, hereinafter termed the Intervenor, to intervene on the basis of its allegation that its current contract covers the employees sought by the Petitioner. The Petitioner contends that the intervention should have been denied because no showing of interest was made by the Intervenor. We find that the Intervenor does, for purposes of intervening, have an interest in these employees *Acme Steel Company, Tool & Machinery Division*, 110 NLRB 913, footnote 1. Accordingly, we hereby affirm the hearing officer's ruling.

clerical employees employed at the time that contract was executed or who would be employed in the future. This appendix also appears in the Intervenor's 1953-1954 contract and its current one.<sup>2</sup>

Because of the changed circumstances and the time that has elapsed since the Board first certified the Petitioner, we reject the Petitioner's request that its 1946 certification be broadened to include office clerical employees now working at plant No. 2. As to the Intervenor's contention, the appendix relied upon by the Intervenor refers to "office clerical employees of the plant No. 2 bargaining unit in the classification shown in Exhibit D attached. . . ." The only classification listed in Exhibit D is that of timekeepers. Timekeepers at plant No. 2 work in the "shop" office, which is located just off the production area, whereas the other clerical employees at plant No. 2 all appear to work in the new office building. The timekeepers record the employees' time and maintain certain cost and production records. Prior to the 1952 contract these employees were listed in the Intervenor's contract in a seniority grouping together with other employees who clearly were plant clericals. In these circumstances, we find that the timekeepers referred to in the Intervenor's contracts, in spite of the use of the term "office clerical" in the appendix when referring to them, are plant clericals.<sup>3</sup> Moreover it also appears that even though the Intervenor alleges that its contract was altered in 1952 to include office clerical employees, the recognition clause of the contract, as it had prior to this time, refers only to the inclusion of shop clerical employees in the unit. In addition, the Employer's personnel manager testified that the contract was not intended to cover any employees who would not come within the term "shop clerical employees." We find, therefore, that the Intervenor's contract does not cover office clerical employees, and that the Intervenor's contract cannot serve as a bar to the instant proceedings. Accordingly, the Intervenor's motion to dismiss, on this ground, is denied.

In view of the foregoing, we find that a question affecting commerce exists concerning the representation of the office clerical employees of the Employer at plant No. 2 within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

#### 4. The appropriate unit :

The Petitioner contends that the only appropriate unit is one consisting of all the Employer's office clerical employees at plants Nos. 1 and 2. It asks that an election be directed among these employees, should the Board reject its request for clarification discussed above. The Intervenor, although claiming to represent the office clerical employees at plant No. 2, did not take an express position as to the ap-

<sup>2</sup> The Intervenor and the Employer agreed on July 23, 1954, to extend their 1953-1954 contract, without substantial change in its terms, until June 30, 1955.

<sup>3</sup> See *Northrop Aircraft, Inc*, 110 NLRB 1349; *Daystrom Furniture Division, Daystrom, Inc*, 101 NLRB 343, 344-345.

propriate unit. The Employer likewise indicated no position on the unit question.

We do not agree with the Petitioner that only the multiplant unit is appropriate here. The relatively proximity of the plants; the top-level supervision, which appears to be on a multiplant basis; and the similarity of work performed by the office clericals at plants Nos. 1 and 2, indicate that a multiplant unit may be appropriate. On the other hand, we note that the immediate supervision of the office clerical employees is on a single-plant basis, and that the Employer's bargaining history with respect to its other employees has always been on a single-plant basis. In these circumstances, we are of the opinion that either a separate unit of all office clericals at plant No. 1 or a multiplant unit of all office clericals at plants Nos. 1 and 2, may be appropriate.

We shall, therefore, direct an election in the following voting group: All office clerical employees of the Employer at its plant No. 2, located at W heatsheaf Lane and Sepviva Street, Philadelphia, Pennsylvania, but excluding timekeepers, shop expeditors, draftsmen, engineers, tool designers, personnel department employees, secretaries to plant officials, sales correspondents, and supervisors as defined in the Act. If a majority of the employees voting cast their ballots for the Petitioner, they will be taken to have indicated their desire to be part of a multiplant unit consisting of all of the Employer's office clerical employees at plants Nos. 1 and 2 and the Petitioner may bargain for them on this basis; if a majority select the Intervenor they will be taken to have indicated their desire to be represented in a single unit of the Employer's plant No. 2 office clericals and the Intervenor may bargain for them on this basis.

[Text of Direction of Election omitted from publication.]

---

**Lloyd Reisner, Business Agent of Local 135; Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL and Coleman Wiggins.** *Case No. 35-CB-145. April 5, 1955*

#### DECISION AND ORDER

On December 23, 1954, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices in violation of Section 8 (b) (1) (A) of the Act and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in a copy of the Intermediate Report.