

compliance, as found above, was not timely with respect to the original petition.

Accordingly, the contract in effect at the time the petition was filed contained an unauthorized maintenance-of-membership provision. As such a contract cannot constitute a bar to a present determination of representatives,¹³ we 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. In accordance with the stipulation of the parties, we find that the following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees at the Employer's 3 Ohio plants, 2 in Middletown and 1 in Miamisburg, including leadmen, inspectors, and shop clerks, but excluding clerical and administrative employees, draftsmen and engineers, professional employees, watchmen, guards, superintendents, foremen, assistant foremen, inspector-supervisors, and all other supervisors as defined in the Act.

[Text of Direction of Election¹⁴ omitted from publication.]

¹³ *The Borden Food Products Company, supra.*

¹⁴ We find without merit the Petitioner's contention that the Intervenor should not be accorded a place on the ballot in the event an election were directed in this proceeding.

Casey-Metcalf Machinery Co.,¹ Crook Company, Electric Tool & Supply Co., George M. Philpott Co., Inc., Shaw Sales & Service Co., Smith-Booth-Usher Co., and Brown-Bevis Industrial Equipment Co., Petitioners and International Union of Operating Engineers, Local Union No. 12, AFL-CIO and Teamsters Automotive Workers Local Union No. 495, AFL-CIO.² Cases Nos. 21-RM-351, 21-RM-352, 21-RM-353, 21-RM-354, 21-RM-355, 21-RM-356, and 21-RM-357. December 28, 1955

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Louis A. Gordon, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ During the hearing, Casey-Metcalf Machinery Co., the Petitioner in Case No. 21-RM-351, requested permission to withdraw its petition. The Acting Regional Director granted the request without prejudice.

² The AFL and CIO having merged, we are amending the identification of the affiliation of the Unions. The Unions are hereinafter respectively referred to as the Operating Engineers and the Teamsters.

At the hearing, the Operating Engineers moved to dismiss the petitions on the grounds that: (1) The Employers had failed to sustain the burden of establishing that they were engaged in commerce within the meaning of the Act; (2) no question exists concerning the representation of employees of the Employers because the Unions never made demands for recognition in appropriate units and filed timely disclaimers of interest; and (3) the units alleged in the petitions are inappropriate. It urged the dismissal of the petitions in Cases Nos. 21-RM-352 and 21-RM-357 on the further ground that these petitions were filed less than 12 months after valid elections had been held among the employees of the Employers involved in those proceedings. For reasons stated hereinafter, we grant the motion to the extent that it seeks dismissal of the petition in Case No. 21-RM-352, but deny the motion in all other respects.

Upon the entire record in these proceedings, the Board finds:

1. The Operating Engineers challenges the substantiality of the evidence on the basis of which jurisdiction was sought to be established at the hearing, but is willing to concede, in the event the Board finds such evidence to be substantial, that the Employers are engaged in commerce within the meaning of the Act. The record shows that the Employers are engaged in the sale and servicing of heavy construction equipment. Top officials of each of the Employers testified of their own knowledge, or on the basis of their recollection of entries made in account books, that the volume of business of their companies in each case met either the direct outflow or the direct inflow standards of the Board for asserting jurisdiction.³ The Operating Engineers contends that no proper foundation was laid to permit testimony from unsupported knowledge, that such evidence was not competent, that the books and records were the best evidence and that the testimony actually received was hearsay.

Hearings in representation cases are essentially investigatory proceedings, and technical rules of evidence are not controlling.⁴ No attempt was made to contradict the testimony adduced in support of the commerce facts. We find that this evidence is substantial, that the Employers are each engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employers.⁵

3. The Operating Engineers contends that no question concerning representation exists because the Unions never made demands upon the Employers for recognition as bargaining representatives of employees in appropriate units, and because of their disclaimers of interest.

³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

⁴ *The Belden Brick Company*, 114 NLRB 52.

⁵ Although duly served with notice, the Teamsters did not appear at the hearing.

We do not agree. Early in May 1955, the Unions called a meeting of "All Non-Supervisory Employees of Equipment Dealers and Parts Houses" for the purpose of learning from the employees what they desired in a union agreement. This meeting was held on May 5. Thereafter on May 11, 1955, in accordance with the majority vote of the employees present at the meeting, the Unions sent separate but identical letters to each of the Employers stating that "during the past several months, we have attempted to arrange . . . a meeting with the Equipment Dealers in Southern California, for the purpose of discussing an agreement between your firm and the below signatory Unions," and "requesting that a representative of your Company be present May 16, 1955 . . . at the Operating Engineers' Building . . . for the purpose of entering into negotiations with the Unions involved, to conclude a workable Agreement." After receipt of these letters from the Unions, the Employers filed separate representation petitions with the Board seeking elections among the same employees whose attendance had been requested by the Unions at the May 5 meeting. Between May 17 and 20, 1955, the Unions wrote the Board stating that they did not "claim to represent the majority of the employees in the units set forth in the above petitions." However, shortly after filing these disclaimers, the Unions contacted representatives of each Employer and requested them to sign collective-bargaining contracts. To the general manager of 1 of these Employers—Electric Tool & Supply Co.—representatives of the 2 Unions stated that all equipment dealers would be organized, and invited that firm to be the first to sign a contract. As to several of the Employers, the Unions also threatened to picket their establishments if they failed to accede to the demands of the Unions.⁶ In each case, the Unions' request for discussion of a contract was denied. Thereupon, picket lines were established at the plants of two of the Employers.⁷ Picketing at the premises of these two Employers was still continuing at the time of the hearing. At the hearing, and in their brief to the Board, the Unions again disclaimed majority representation of employees at the plants of the Employers.

Although the Unions never formally claimed to represent a majority of employees at the plants of each of the Employers, we find that the Unions' original requests, as set out in their letters of May 11, for a

⁶ A representative of the Operating Engineers contacted George M. Philpott Co., Inc., and Shaw Sales & Service Co. and told these Companies that his Union wanted a bargaining contract with them, that other plants were being picketed, and that their plants would also be picketed if they refused to negotiate. Picket lines were ultimately established at Shaw Sales, but not at Philpott.

⁷ The Unions established picket lines at Brown Bevis Industrial Equipment Co. on May 31, 1955, and at Shaw Sales & Service Co. on June 10, 1955. At the time of the hearing, the Unions were picketing not only the establishments of the named Employers, but also that of Crook Company. Picketing at the latter began on February 17, 1955, was temporarily interrupted on March 3, 1955, when the parties entered into a consent-election agreement, and was resumed on March 9, 1955, after the union petitioner lost the election.

meeting with the Employers to "conclude a workable Agreement," were tantamount to demands for recognition⁸ which, when denied by the Employers, were sufficient to raise questions concerning representation.⁹ Nor do we find merit in the Operating Engineers' contention that no claim to representation was made in an appropriate unit as required by the Act, because the Unions never indicated specifically the classifications of employees they desired to represent. The Employers filed the instant petitions after being informed that the Unions had called together all their nonsupervisory employees to inquire of the latter what they wanted in the way of a collective-bargaining agreement, and after being invited to meet with the two Unions jointly for the purpose of discussing a contract presumably covering these employees. The unit designated in each petition, which but for certain minor modifications corresponds to the unit hereinafter found appropriate, is a plantwide unit with a nucleus of shop employees. Over a period of the last few years, the Operating Engineers has filed separate petitions for units restricted to the shop employees of some of the present Employers. Pursuant to these petitions, consent elections were held at different times among the shop employees of Smith-Booth-Usher Co., George M. Philpott Co., Inc., and Crook Company, and a Board-directed election was conducted among the shop and field employees of Brown-Bevis Industrial Equipment Co.¹⁰ In those proceedings, the Operating Engineers was sole petitioner. In the instant case, the requests for contract negotiations were made jointly by the Operating Engineers and the Teamsters. As conceded by the assistant manager of the Operating Engineers at the hearing, substantially all of the categories enumerated in the present petitions fall within the jurisdiction either of the Operating Engineers or of the Teamsters. It is reasonable therefore to infer, and we find, that the Unions' demands for collective-bargaining contracts covered plantwide units substantially identical with the units which we hereinafter find appropriate.

We also reject as without merit the Operating Engineers' further contention that the disclaimers of the Unions prevented the arising of questions concerning representation. A disclaimer to be effective

⁸ We do not credit the statement made at the hearing by the labor relations representative of the Operating Engineers that the Unions wanted to meet with the Employers simply to explore the possibilities of organizing the employees in a multiemployer unit and of entering into a collective-bargaining agreement covering such a unit. The very wording of the Unions' letters of May 11, particularly when viewed in the light of subsequent union demands, makes it abundantly clear that what was contemplated was the execution of individual employer contracts, rather than a general discussion as to the feasibility of organizing the Employers' employees in a multiemployer unit. We note, also, that no contention is made that a multiemployer unit is appropriate in this case.

⁹ *Jewett & Sherman Co.*, 110 NLRB 806, 807.

¹⁰ See *Smith-Booth-Usher Co.*, 21-RC-2416; *George M. Philpott Co., Inc.*, 21-RC-3615; *Crook Company*, 21-RC-3855; *Brown-Bevis Industrial Equipment Co.*, 21-RC-3667 (not reported in printed volumes of Board Decisions and Orders)

must be clear and unequivocal.¹¹ In the instant case, the Unions disclaimed once when informed of the filing of the present representation petitions, and then almost immediately thereafter negated their disclaimers by demanding collective-bargaining negotiations of the Employers. At the hearing, the Unions disclaimed again. In the light of the whole record, it is plain that the Unions are playing "fast and loose" and that their disclaimers of majority representation cannot be given credence. We shall, therefore, proceed to resolve the existing questions concerning representation by directing the holding of separate elections.¹²

Finally, the Operating Engineers contends that the petitions in Case No. 21-RM-352, Crook Company, and Case No. 21-RM-357, Brown-Bevis Industrial Equipment Co., should be dismissed upon the ground that valid elections were held among employees of these companies within the 12-month period preceding the filing of the petitions in these cases. In the *Crook* case, the Board conducted a valid election on March 9, 1955, and in the *Brown-Bevis* case, on December 31, 1954. The union-petitioner lost both elections. The two elections were conducted in units substantially like the units hereinafter found appropriate. Section 9 (c) (3) of the Act provides:

No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

As a valid election for the employees of Crook Company was held only 9 months ago, we shall dismiss the petition in that case in accordance with the statutory mandate. However, the previous election for employees of Brown-Bevis Industrial Equipment Co. was held approximately 1 year ago, and a new election for those employees will not be held until January 1956, or more than a year from the date of the earlier election. We therefore find no statutory obstacle to directing such an election even though the petition was filed less than 12 months from the date of the December 1954 election.¹³ Accordingly, we hereby deny the Operating Engineers' motion insofar as it seeks to dismiss the petition in the Brown-Bevis case (21-RM-357).

Although the parties have not raised the issue, the record indicates that as a result of a consent election held on June 21, 1954, the Operating Engineers was certified on June 29, 1954, as the bargaining representative of Philpott's shop maintenance and repair employees. The petition in Case No. 21-RM-354 was filed approximately 10½ months after the Operating Engineers' certification. The record is silent as to whether the parties, subsequent to the certification, negotiated a collective-bargaining agreement, and, if so, whether such an

¹¹ *McAllister Transfer, Inc.*, 105 NLRB 751.

¹² *V & D Machine Embroidery Co.*, 107 NLRB 1567, 1569.

¹³ *Coastal Drydock & Repair Corp.*, 107 NLRB 1023.

agreement expired in the interval between the election and the filing of the instant petition.¹⁴ In these circumstances, and in accordance with well-established Board policy, we shall dismiss the petition in the Philpott case for the reason that it was filed prior to the expiration of the certification year.¹⁵

We find that questions affecting commerce exist concerning the representation of employees of certain of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. Each Employer seeks a separate election among all nonsupervisory employees, including mechanics, welders, helpers, machine tool operators, painters, warehouse employees, truckdrivers, partsmen, office workers, equipment craters, steam cleaners, janitors, outside servicemen, and any other job classifications. A large number of the above-named classifications are of the types usually associated with a unit of shop and field employees. Thus, as disclosed by the record, the Employers' mechanics, welders, machine tool operators, outside servicemen, painters, and steam cleaners are all engaged in the mechanical function of repairing and servicing equipment. The Operating Engineers does not question the validity of units of shop employees as such, but contends that the units as alleged in the petitions are inappropriate in view of the proposed inclusion therein of partsmen, shipping and receiving clerks, truckdrivers, office clerical employees, and salesmen.

The record discloses that the shipping and receiving clerks do all the necessary clerical work in connection with the handling of incoming and outgoing freight. The partsmen prepare invoices, fill orders, and keep records in connection with inventory storage and dispensing of parts. The truckdrivers spend the greater portion of their time making deliveries to customers and work out of the warehouse or the shipping department.

The record indicates that the shipping and receiving clerks and the partsmen are plant clerical employees. As such we shall include them in the units. In accordance with our practice, we shall also include the truckdrivers.¹⁶

We agree with the Operating Engineers that office clerical employees and salesmen do not properly belong in the type of units herein involved. The record shows that the office clericals perform usual bookkeeping functions and that they are separately located and supervised. The salesmen for the most part work out in the field where they contact customers and promote the sale of the Employer's products. We find that office clerical employees and salesmen have no sub-

¹⁴ *Ludlow Typograph Company*, 108 NLRB 1463.

¹⁵ *Centr-O-Cast & Engineering Company*, 100 NLRB 1507

¹⁶ *Chicago Pneumatic Tool Company*, 108 NLRB 174.

stantial community of interest with other employees in the units, and in accord with our usual practice, shall exclude them.¹⁷

Accordingly, we find that all employees at each of the Employer's establishments in California, including mechanics, welders, helpers, machine tool operators, painters, steam cleaners, janitors, outside servicemen, shipping and receiving clerks, partsmen, warehouse employees, equipment craters, and truckdrivers, but excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[The Board dismissed the petitions in Cases Nos. 21-RM-352 and 21-RM-354.]

[Text of Direction of Elections omitted from publication.]

MEMBERS MURDOCK and BEAN took no part in the consideration of the above Decision, Order, and Direction of Elections.

¹⁷ *Westinghouse Electric Corp.*, 110 NLRB 475, *Ozark Manufacturing and Supply Company*, 108 NLRB 1476.

International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO,¹ Local 31, and Prescott Jentzel, its business agent and John Frank and Joseph S. Aguiar. Case No. 1-CB-284. December 29, 1955

DECISION AND ORDER

On February 2, 1955, Trial Examiner Sidney Asher issued an Order in the above-entitled proceeding, finding that the Company's operations in interstate commerce did not meet the Board's jurisdictional standards, and granting the Respondents' motion to dismiss the complaint in its entirety. Thereafter, the General Counsel filed a request for review. On March 10, 1955, the Board ordered the record reopened and the case remanded to the Trial Examiner for a further hearing pertaining to the Employer's involvement in interstate commerce. On May 27, 1955, the Trial Examiner issued an Intermediate Report in this case, wherein he found, upon the additional commerce data presented at the second hearing directed by the Board, that the Company's operations meet the Board's jurisdictional standards. He further found, from the entire record, that the Respondents had engaged in and were engaging in certain unfair labor practices and recommended that they cease and desist therefrom and take certain

¹ The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the Union accordingly.