

strue the stipulation as evidencing the intention of the parties to exclude all plant clerical employees from the unit. Accordingly, having found that the stores attendants and senior stores attendant are plant clericals, we shall exclude them from the unit.<sup>10</sup>

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 employed at the Employer's Tanners Creek generating division, Lawrenceburg, Indiana, on an hourly rated basis, including the following classifications: master results man, results man, junior results man, and results helper in the results department; filter operator and sampler in the laboratory department; assistant control operator and auxiliary equipment operator in the operations department; crane operator, coal operator, barge handler, and yard helper in the yard department; master maintenance man, maintenance man, junior maintenance man, and maintenance helper in the maintenance department; laborers and utility man in the utility department; and janitors; but excluding the division manager, assistant division manager, operations supervisor, maintenance supervisor, chief chemist, chemist, personnel supervisor, plant engineers, results engineers, shift operations engineer, assistant shift operations engineers, test engineers, safety supervisor, supervisor of janitors, foreman—yard, assistant foreman—yard, maintenance foremen, labor foremen, office supervisors, power station clerk, senior stores attendant, stores attendants, laboratory testers, control room operators, co-op students, all probationary, temporary, part-time, confidential, technical, professional, office clerical, and plant clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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

<sup>10</sup> *Awelston Manufacturing Co.*, 110 NLRB 624. Accordingly, we find it unnecessary to consider the Employer's contention that the senior stores attendant is a supervisor.

**Armour and Company, d/b/a Memphis Cotton Oil Mill and Local 196, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO, Petitioner.**  
*Case No. 32-RC-884. February 21, 1956*

#### DECISION, ORDER, 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 E. Cienki, hearing 115 NLRB No. 82.

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.

On February 28, 1955, following an election conducted pursuant to a stipulation for certification upon consent election in Case No. 32-RC-809, the Board certified the Petitioner as the exclusive bargaining representative in a unit of all production and maintenance employees at the Employer's cotton oil mill at Memphis, Tennessee, excluding the office porter, the timekeeper, the temperature reader, and supervisors as defined in the Act. Following the execution of a bargaining agreement on June 1, 1955, pursuant to the certification, the Employer and the Petitioner disagreed with respect to the inclusion in the unit of three individuals, alleged to be supervisors, and an office porter, excluded by stipulation in the consent election. On November 14, 1955, the Petitioner filed its instant petition for a unit composed of these individuals.

With respect to the linter room foreman, the cake mill operator, and the fiber plant operator, all of whom the Employer would exclude as supervisors, we find that the dispute as to them is not directed to the basic structure of the unit. Furthermore, in light of the fact that the Petitioner is the majority representative and currently recognized as such by the Employer with respect to the Employer's production and maintenance employees in the certified unit, regardless of which of these three disputed individuals we now find should or should not be part of the supervisory exclusions in the certified unit, we view this situation as substantially the same as in those cases where we have amended a certification either on motion by one of the parties or on our own motion.<sup>1</sup> As the duties of these individuals have been fully litigated here, we shall, as a matter of administrative expedience, after determining their status, order the certification in Case No. 38-RC-809 amended accordingly.

### The Alleged Supervisors

The linter room foreman, under the immediate supervision of the assistant superintendent, is responsible for the operation of a gin stand,

<sup>1</sup> *The Daily Press, Incorporated*, 110 NLRB 573, 579. See also *Tide Water Associated Oil Company*, 101 NLRB 570; *Bausch & Lomb Optical Company*, 92 NLRB 139.

an automatic machine which removes linters from seed. On his shift are an employee who oils and maintains the machine and files, sharpens, and replaces saws; a second employee who changes saws three times a day and assists in baling; and a third employee who sweeps and operates outside the building a machine which catches and bales the lint from the gin stand. There is no evidence that the linter room foreman directs the work of these men, whose work can be performed with a minimum of supervision, or that he is in any way responsible for their work. With 4 years longer employment with the Employer than the next highest paid employee in the linter room, he receives 11½ cents an hour more than the latter and 14½ cents more than the lowest paid employee. The cake mill operator runs two motors which grind cake into meal. He is under the immediate supervision of the timekeeper and shipping clerk, who also supervises three sack sewers working in the same area. The cake mill operator has no helpers and in no way directs or instructs the sack sewers, who receive 3 cents an hour more in wages than he does. The fiber plant operator operates a machine which cuts cotton from the hull and grinds the hull. Although he works in the same area with a bran catcher, a sack sewer, and a trucker, he has no supervisory or work contacts with them.

None of the alleged supervisors appear to exercise any of the indicia of supervisory authority set forth in Section 2 (11) of the Act, and the Employer stipulates that they have never been informed that they have any such authority.<sup>2</sup> Under these circumstances, we find, contrary to the Employer, that the linter room foreman, the cake mill operator, and the fiber plant operator are not supervisors as defined in the Act and that they are therefore eligible for inclusion in the existing unit.

#### The Office Porter

The office porter spends one-half of his time cleaning the office and maintaining the yard and hedge around the office; he spends the remainder of his time cleaning the plant superintendent's office. As the parties in the consent election specifically excluded the office porter by name, we regard the petition as to him as a request to add him to the existing certified production and maintenance unit. We find that on

<sup>2</sup> The Employer contends that, whether or not the alleged supervisors are actually in charge of employees, they should nevertheless be considered supervisors in view of the continuous nature of the Employer's operation, which at all times requires in each department persons in positions of authority who are responsible for the operation of their respective departments. It is well established, however, that the functions, duties, and authority of individuals, rather than the titles they hold in an employer's organization, are determinative of their supervisory status, according to statutory standards *Cunch Manufacturing Corporation*, 98 NLRB 781, 783. The Employer's general manager testified that the linter room foreman "could very well make recommendations" and that "it is entirely possible" that the fiber plant operator would be consulted in the event of a vacancy in his department or in the event of unsatisfactory performance by a new employee. This testimony, without more concrete proof of the existence of supervisory authority, is in our opinion too meager and indefinite to form a basis for excluding the individuals in dispute as supervisors within the meaning of the Act.

the record in this case and under Board precedent<sup>3</sup> he has sufficient community of interests with the production and maintenance employees to be included in the certified bargaining unit. In these circumstances, we shall direct that an election be held to determine whether or not the office porter desires to be represented by the Petitioner for purposes of collective bargaining.<sup>4</sup> If he votes for the Petitioner he will be taken to have indicated his desire to be included in the production and maintenance unit currently represented by the Petitioner.

### ORDER

IT IS HEREBY ORDERED that the certification of representatives in Case No. 32-RC-809 be, and the same hereby is, amended so that the unit for which the Petitioner was certified should include the linter room foreman, the cake mill operator, and the fiber plant operator.

[Text of Direction of Election omitted from publication.]

<sup>3</sup> *Palmer Manufacturing Company*, 103 NLRB 336, 339.

<sup>4</sup> *The Enterprise Company*, 106 NLRB 798.

**United Brotherhood of Carpenters and Joiners of America, Millmen's Local 824, AFL-CIO and Eugene Beauchamp.** *Case No. 7-CB-246. February 23, 1956*

### DECISION AND ORDER

On June 23, 1955, Trial Examiner A. Norman Somers 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 filed exceptions to the Intermediate Report and the General Counsel filed a memorandum in support of it.

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 memorandum, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations except insofar as they are inconsistent with the findings, conclusions, and order set forth below.

The Trial Examiner found, in substance, that the Union violated Section 8 (b) (2) and (1) (A) of the Act by threatening to cause and causing the Company to discriminate against employee Beauchamp because he refused to attend a union meeting to be initiated into membership. Our dissenting colleague argues, however, that be-