

challenges to the ballots of Miller, Achenbach, Jones, Cervine, Bock, and Lagna.<sup>2</sup>

The challenged ballots of the remaining four individuals, Joseph Rossetti, Lawrence Dresang, Ralph Stillwell, and William Weiler, whom the Regional Director found not to be supervisors, are insufficient to affect the results of the election. Accordingly, we find it unnecessary to rule on them.<sup>3</sup>

As the tally of ballots shows that the Petitioner received a majority of the valid ballots cast, and the number of unresolved challenges is insufficient to affect the results of the election, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO), as the designated collective-bargaining representative of all production, maintenance, and shipping and receiving employees of the Employer at its dies, castings and valves operators manufacturing plant at Los Angeles, California, including truckdrivers, but excluding office and plant clerical employees, engineering employees, technical employees, draftsmen, laboratory employees, salesmen, production control employees, professional employees, guards, and supervisors as defined in the Act.]

<sup>2</sup> Member Bean dissents from the finding that Achenbach and Lagna are supervisors as defined in the Act. He does not deem the facts set out above as to them sufficient evidence that they "responsibly" direct other employees. These 2 ballots, plus the 4 other challenged ballots which are not finally disposed of in the draft, are sufficient to affect the results of the election. No exceptions having been filed to the Regional Director's recommendation to open this last group of ballots, Member Bean would proceed to do so. Accordingly, as the results of the election are now inconclusive, he would not issue a certification of representatives to the Petitioner.

<sup>3</sup> *The Coolidge Corporation*, 108 NLRB 3, 6.

**White Provision Company and National Brotherhood of Packinghouse Workers, Petitioner.** *Case No. 10-RC-3553. November 8, 1956*

### DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Hugh Frank Malone, 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 Petitioner and the Intervenor, Local Union 108, United Packinghouse Workers of America, AFL-CIO, are labor organizations which 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 Intervenor which has represented the Employer's production and maintenance employees for many years, urges that its last contract is a bar to this proceeding. The last contract, by its own terms, expired September 1, 1956. Thereafter, the parties executed a supplemental agreement providing for the continuation of the old contract, pending execution of a new contract but providing, also, that the supplemental agreement may be canceled by either party within 24 hours' notice.

The Board has held that an agreement of indefinite duration following upon the expiration of a contract having a fixed term is no bar.<sup>1</sup> On the basis of the foregoing, we find that neither the old contract which has expired nor the supplemental agreement constitutes a bar to the present proceeding.

4. The parties are in agreement that the production and maintenance employees at the Employer's Atlanta, Georgia, plant may constitute an appropriate unit. The only disagreement relates to the question of the inclusion or exclusion of certain categories. The collective-bargaining contract of the Intervenor and Employer has always excluded plant clericals and related classifications herein in issue. The Petitioner urges that as these disputed categories are clearly plant clericals, there is no reason for continuing to exclude them. The Employer and Intervenor contend that these categories are confidential, managerial, or supervisory and should be excluded on those grounds and because of the history of collective bargaining which has hitherto always excluded them.

We shall therefore proceed to consider the categories in dispute.

*The plant clericals:* The Employer and Intervenor would exclude certain named plant clerks,<sup>2</sup> who work in various production departments adjacent to and under the direction of the foremen. They perform the customary duties of their classification such as keeping stock records, taking inventories, keeping production and cost statistics, and payroll and performance records. When the foreman is engaged in the first step of the grievance procedure, as required by the con-

<sup>1</sup> *New Jersey Porcelain Company*, 110 NLRB 790.

<sup>2</sup> Gore (pork dressing and cutting department); Yates (beef cutting and car out department); Sloan (sweet pickle department); Jones (supply storage department); Collins (mechanical department); Dupree (table ready meats department); McElhannon (freezer department); Barrett (city shipping department); Colvard (truck shipping); Moore (shipping department). At the hearing, the parties agreed to exclude J. H. McIntosh, a plant clerical, on the ground that he also acts as a guard.

tract, the plant clerk furnishes him with the necessary data concerning the aggrieved employee such as rates, hours, and other related facts of the case. There is no evidence that the clerk makes and effectuates labor relations policy or that he assists or acts in a confidential capacity to the foreman when the latter is engaged in handling the grievance for management. When a foreman is ill or on vacation, the clerk may be called upon at irregular and sporadic intervals to substitute for him in the department. Several of the clerks direct the work of a few employees under them in their respective departments. However, this direction appears to be routine in character and is akin to that of gang leaders, who are not considered supervisors.

*Quality control inspectors:* There are two employees who work in the quality control department, which is attached to the superintendent's staff. They spend 75 percent of their time in the production departments taking samples of products and 25 percent of their time at their desks making analyses and tests to determine whether the products meet the required standards, such as uniform size and weight, good color, or other required factors. They use scales but no other laboratory equipment, most of their tests being visual. If defects are discovered, they report this fact to the production foremen. They make regular reports on their work to the superintendent.

*Ticket callers:* There are two employees designated by this classification. These men work in the shipping department and are responsible to the night shipping foreman. Their duties are to take a shipping order, call out the various items to be shipped, and see to it that the products are properly packaged, weighed, and put on a conveyor belt to be sent out to the loading dock. When the foreman is absent, they direct the work to be done. There is, however, no evidence of regularity in this assumption of supervisory duties.

*Dock checkers:* There are two dock checkers. Their duty is to check the products into the trucks and direct the proper loading so as to facilitate delivery. They work at night and are responsible to the night foreman.

All of the above categories of employees are salaried as opposed to the production workers who are on an hourly basis and they have different vacation benefits and accident and sickness insurance. However, they have all worked at one time or another as production workers. As indicated above, they have traditionally been excluded from the production and maintenance unit.

The Employer and Intervenor contend that the above listed groups should be excluded from the unit because they are either managerial, confidential, or supervisory. They contend the employees are managerial because they handle data pertaining to costs and production, and that therefore their interests are more closely allied to management and contrary to those of the rank and file. They also contend

that such employees are confidential because they have access to information pertaining to grievances handled by the foremen; further, that in some cases a number of these clerks are supervisors.

We find no merit in these contentions. It is well established in Board policy that mere access to information pertaining to the costs and operation of a business does not make the employee involved a member of management.<sup>3</sup> It is also clearly established that only those employees are confidential who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.<sup>4</sup> The evidence in the instant proceeding does not support the contention that the clerks herein involved are confidential secretaries to individuals who make or effectuate labor relations policies.<sup>5</sup> Nor do we find that any of the clerks are supervisors, as such supervision as they exercise is routine in nature and sporadic and is exercised mainly in the absence of the regular foreman, the frequency of which is not in evidence. Likewise we find that the quality control inspectors are neither confidential employees nor technical employees, as there is no evidence they act in a confidential capacity to management representatives who deal with labor relations, or that they have special technical training to justify their exclusion from the production unit as technical employees.<sup>6</sup> Finally, the Board has held that the mere difference in method of payment or compensation is no basis for excluding such employees from an appropriate unit.<sup>7</sup>

In the absence of a bargaining history, we would have included the above-mentioned categories in the production and maintenance unit in accordance with Board policy with respect to plant clericals<sup>8</sup> and inspectors.<sup>9</sup> However, as they have been excluded for several years, they should not now be included without being given an opportunity of voting separately on whether they desire to become part of the unit.<sup>10</sup> Accordingly, we shall make no unit finding at this time, but shall direct elections in the following voting groups of employees at the Employer's Atlanta, Georgia, plant, excluding from each voting group supervisors as defined in the Act:<sup>11</sup>

<sup>3</sup> *Truscon Steel Company*, 88 NLRB 331, 337.

<sup>4</sup> *The B. F. Goodrich Company*, 115 NLRB 722.

<sup>5</sup> *Bell Brothers Company, Incorporated*, 87 NLRB 34, 37.

<sup>6</sup> *Geibel Plastic Company*, 113 NLRB 462, 464.

<sup>7</sup> *Peerless Products Company*, 114 NLRB 1586, 1588; *J. Segart & Co.*, 114 NLRB 1159, 1160.

<sup>8</sup> *Brown Instruments Division, Minneapolis-Honeywell Regulator Company*, 115 NLRB 344.

<sup>9</sup> *Clayton Mark & Company*, 76 NLRB 230; *Metal Textile Corporation*, 88 NLRB 1326, 1329.

<sup>10</sup> *The Zia Company*, 108 NLRB 1134, 1136.

<sup>11</sup> The Employer would also exclude the assistant foreman of the beef cooler department. This man works at night and has on the average of five employees under him. There is no other foreman working in the department at night. The evidence shows that he can effectively recommend hiring, discharging, etc., and also grant time off. We find under these circumstances, that the assistant foreman is a supervisor, and exclude him from the unit.

(1) All production and maintenance employees, including truck-drivers but excluding all office clerical employees,<sup>12</sup> salesmen, professional employees, guards, and all supervisors as defined in the Act.

(2) All plant clerical employees, including plant clerks, quality control inspectors, ticket callers, dock checkers,<sup>13</sup> but excluding supervisors and all other employees.

If a majority of the employees in voting group (2) vote against representation, they will be taken to have indicated their desire to be, and they will be, excluded from the production and maintenance unit. If a majority vote for representation, their ballots will be pooled with those in voting group (1) and the two groups together will constitute a single appropriate unit. The Regional Director is instructed to issue certification of representatives or certification of results as dictated by the outcome of the elections herein.

[Text of Direction of Elections omitted from publication.]

<sup>12</sup> The Employer and Intervenor would exclude and the Petitioner include the livestock buying office clerks. There are 4 or 5 clerks who work in the stockyard office, which is separate from the main plant. These clerks are under the supervision of the auditor who also supervises the general office employees. Their duties are to handle all the clerical work for the buyers such as preparing vouchers in payment of cattle purchased and keeping all records of buying operations. We find that as these employees are engaged primarily in clerical work for the buying staff, they are office clericals and are excluded from the production unit. *Plankinton Packing Company*, 116 NLRB 1225.

<sup>13</sup> The record shows that the head dock checker directs a number of employees in their work and that he can and has made effective recommendations concerning the status of these employees. He has also been hitherto excluded from the unit. The Petitioner's position as to the head dock checker is not clear. As the uncontradicted record indicates that he has made effective recommendations concerning employees, we shall exclude him as a supervisor.

**Jones-Dabney Company, Division of Devoe & Reynolds Co. and International Union, Allied Industrial Workers of America, AFL-CIO, Petitioner.** *Case No. 9-RC-2865. November 8, 1956*

### 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 Alvin Schwartz, 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 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.