

We have also considered the Employer's contention that the unit requested by the Petitioner is based on its extent of organization among the Employer's employees, and should therefore, pursuant to Section 9 (c) (5) of the Act, be found inappropriate. In support of this contention the Employer points to the fact that the Board has directed two previous elections in a production and maintenance unit in both of which the Petitioner failed to obtain a majority, and to the fact that in letters distributed to employees prior to the filing of the instant tooling department petition, the Petitioner stated: "Our *secondary objective* will be to secure enough organization cards so that we can request an election for the Production Workers." We do not, however, attach the same significance to these events as does the Employer. It is clear that the Petitioner is not attempting to reestablish itself as the overall bargaining representative as it at no time in the past represented any of the Employer's employees.<sup>2</sup> Furthermore, the Board has held that the effect of Section 9 (c) (5) is to preclude the Board from giving *controlling* weight to the extent of a union's organization in determining the appropriateness of a unit, and as detailed above, our finding that the tooling department is an appropriate unit is affirmatively supported by clear and decisive factors wholly unrelated to extent of organization. Hence, we reject the Employer's arguments based upon the dismissal of the petition in the *Westinghouse Electric* case.<sup>3</sup> No decisive affirmative support, corresponding to that given the petition here, was present in that case. We therefore find that Section 9 (c) (5) of the Act does not render the requested unit inappropriate.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining: All employees of the Employer's tooling department (department 130), including apprentices, inspectors, tool crib attendants, and leadmen, but excluding all other employees, all office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>2</sup> See *American Cyanamid Company*, 110 NLRB 89, footnote 2.

<sup>3</sup> 115 NLRB 1381.

**Barrett Division, Allied Chemical & Dye Corporation and United Steelworkers of America, AFL-CIO, Petitioner. Case No. 8-RC-2786. November 28, 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 Nora Friel, 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.

4. Petitioner, which represents the production and maintenance employees of the Employer's Youngstown, Ohio, plants, seeks a unit of clerical employees, warehouse employees, and assistant chemists with the usual exclusions. The Employer contends that the unit is not appropriate on the ground that the employees sought are either managerial or confidential and may not be represented for collective-bargaining purposes. As its alternative position, the Petitioner would accept any unit or units which the Board finds to be appropriate.

The Petitioner seeks to include the following classifications:

*Shipping and receiving clerk:* The duties of this clerk are to receive orders from the sales department and planning department, and make shipments as required by the orders. He arranges for truck or rail transportation, makes out bills of lading, checks and makes payment on freight bills, and is the official weighmaster at the plant.

*Production and purchasing clerk:* This clerk receives records from the production department, transcribes and summarizes them, and then forwards them to the New York accounting office. As purchasing clerk, he receives requisitions for materials, as approved by the superintendent, obtains the supplies listed on the requisitions, issues purchasing orders, selects the vendors, and follows up orders to see that deliveries are made as ordered. He has no authority to purchase large items of machinery, which is done by the New York office. Vendors under national contracts are selected by the New York office. He spends less than half-hour per day interviewing salesmen, and less than half a day on his purchasing duties, which do not involve the exercise of substantial independent discretion.

*Storekeeper and assistant storekeeper:* These men work in the warehouse. The duties of the storekeeper are to maintain adequate stock levels in the storeroom, and when materials are received, he places them in proper storage bins. He also procures materials as requested by the maintenance supervisor. The assistant storekeeper assists the storekeeper when necessary, or substitutes for him when absent. His duties also include the maintenance of perpetual inventory cards of materials in the storeroom.

All the above clerks work either in the office or warehouse, and all are supervised by the accountant. They are salaried but also paid time and a half for overtime. The Employer concedes they are not supervisors but contends that they perform management functions and have interests closely allied to management. We do not agree. We have frequently held that employees performing the work of these classifications are office or plant clerical employees and not confidential employees or allied to management. They are therefore entitled to representation.<sup>1</sup>

*Payroll clerk, payroll and construction clerk, receptionist-typist-clerk:* The payroll clerk receives timecards, payroll distribution sheets, etc., and makes up payrolls and related reports for the New York office. The payroll and construction clerk processes purchase orders for payment and is in charge of bookkeeping ledgers relating to repairs. She also makes progress reports on construction and repair work and assists the plant accountant in making up general entries. The receptionist-clerk-typist answers the telephone, types letters, operates the teletype, and orders stationery and other office supplies. These clerks work in the office of and are supervised by the plant superintendent, who is also in charge of labor relations. The Petitioner agrees that the confidential secretary of the superintendent should be excluded but contends that the above-mentioned employees perform the customary duties of their classifications and should be included. We agree that these clerks perform the usual office clerical duties and are not confidential. We also find no merit in the Employer's argument that because these clerks work in the same small room with the confidential secretary and because they occasionally substitute for her when she is on vacation or is ill, they should therefore be excluded, as it is clear that such substitution is only sporadic.<sup>2</sup>

*Assistant chemists:* These men work in the laboratory and are supervised by the chief chemist. They make routine tests on materials received and final products ready for shipment, such as determining percentage of water in tar, specific gravity, amount of chloride or benzol, flow tests, and melting points. They do no research or work on new products. The evidence shows that no college education is required and that only enough knowledge of chemistry is necessary to understand the tests which are performed. There is no contention that the chemists are professional employees. The Employer argues that these men are managerial employees because the Company must rely on them for the protection of its property and its position with

<sup>1</sup> *Republic Steel Corporation*, 91 NLRB 904, 906, 907 (schedule clerks; bonus clerks; secretaries); *Truscon Steel Co.*, 95 NLRB 1005, 1008 (receiving and general stores department clerks; shipping department clerks; warehouse clerks; machine shop clerks); *Farmers Union Live Stock Association*, 116 NLRB 1069 (purchasing employees). See also *The B. F. Goodrich Company*, 115 NLRB 722.

<sup>2</sup> *Potomac Electric Power Co.*, 111 NLRB 553, 563.

its customers. We find no merit in this contention. The mere fact that an employee may be in a position to injure the Employer's business through his possession of trade or other secrets does not make him a confidential or management employee.<sup>3</sup> As it is well established that these employees perform routine technical duties we find they are nonmanagerial technical employees who may be included in the unit hereinafter found appropriate.<sup>4</sup>

We find that the following employees at the Employer's Youngstown, Ohio, plant, including office clerical employees, warehouse employees, the assistant chemists, but excluding the confidential secretary to the plant superintendent, professional employees, guards, watchmen,<sup>5</sup> and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

<sup>3</sup> See *Republic Steel Corporation, supra*.

<sup>4</sup> The Board will not, ordinarily, include technical employees in the same unit with production and maintenance or clerical employees, where objection is raised to their inclusion by any of the parties. However, as the Employer does not object to the inclusion of the chemists on the ground of their technical duties and as we find they are not managerial employees, we include them in the unit herein found appropriate.

<sup>5</sup> There are 4 watchmen who make regular rounds on a 24-hour basis, punching A. D. T. clocks which are located throughout the plant. These watchmen also answer telephone calls, furnish materials from the storeroom, and assist in loading barges. As the evidence shows that these men are regularly engaged in protecting the Employer's property, we find they are guards, and excluded from the unit. There is one man who is hired as an extra watchman and also to assist in loading barges when the need for an extra man requires his services. He is engaged in full time work as a fireman for the city. As the evidence shows that he acts as a watchman only sporadically, we find he is not a guard and include him in the unit.

**Local 791, International Longshoremen's Association, Independent [T. Hogan & Sons, Incorporated] and William H. Reilly.**  
*Case No. 2-CB-1647. November 30, 1956*

### DECISION AND ORDER

On June 29, 1956, Trial Examiner James A. Corcoran issued his Intermediate Report in this proceeding, finding that the Respondent had engaged 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 General Counsel filed exceptions, with a supporting brief, to the Intermediate Report with respect to the scope of the Trial Examiner's recommended cease and desist order. No other exceptions were timely filed.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Inter-