

visor are supervisors within the meaning of the Act, and we shall exclude them from the unit.

We find 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 programmers and operators, the utility man, and the artist¹¹ employed by the Hirsch Broadcasting Company and Versatile at its Cape Girardeau, Missouri, radio and television broadcasting operation, but excluding all office clerical employees, salesmen, announcers, continuity writers, watchmen and guards, professional employees, and supervisors as defined in the Act.¹²

[Text of Direction of Election omitted from publication.]

¹¹ Although the Petitioner does not seek to represent the artist employed by Versatile, because of his close community of interest with other employees in the unit and because no other labor organization seeks to represent him, we shall include him in the unit. *Empire Coal Co., Inc., supra*, and *Petrie's, an Operating Division of Red Robin Stores, Inc.*, 108 NLRB 1318, 1319. See also *Olden Camera & Lens Company*, 108 NLRB 35, 37, 38.

¹² The Petitioner sought the inclusion of television technicians, engineers, projectionists, and electronic and film cameramen. Because there are no employees presently in these classifications, we make no unit determination at this time with respect thereto. *American Smelting and Refining Company*, 102 NLRB 1489, 1491.

Painesville Works, General Chemical Division, Allied Chemical and Dye Corporation¹ and Petroleum Truck Drivers, Warehousemen, Loaders, Yardmen, Maintenance Employees, New and Used Barrel Drivers, Chemical Drivers and Waste Oil Drivers and Helpers Local Union No. 545, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner. Case No. 8-RC-2765. December 14, 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 Ralph W. Tyner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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

¹ The name of the Employer appears above as amended at the hearing.

² The hearing officer referred to the Board a motion made by the Employer at the hearing to strike all testimony relating to the Employer's National Works plant located in Garfield Heights, Ohio. As such testimony is immaterial to the determination of the unit issue in the case at bar, this motion is hereby granted.

³ Local Union No. 13853, District 50, United Mine Workers of America, herein called the Intervenor, was permitted to intervene in the present proceeding upon the basis of its con-

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. The Employer is engaged in the production of sulphuric acid at its plant located in Painesville, Ohio. This plant has been in operation since February 1954, and is the only plant of the Employer involved in this proceeding.

The Petitioner seeks to sever a unit of truckdrivers from an existing unit of production and maintenance employees currently represented by the Intervenor. The Employer and the Intervenor oppose severance on the ground that there is no functionally distinct group of truckdrivers, and that, therefore, the existing plantwide unit of employees is the only unit appropriate for the purposes of collective bargaining.

The record shows that the Employer delivers sulphuric acid by tank truck to customers within a 75-mile radius of its plant, these deliveries being known as "runs." The Youngstown run takes approximately 8 hours, and is generally made 3 times each day. The Warren and General Tire runs are also made on a virtual daily basis with each requiring about 6 hours. There are also regular runs to Diamond and Nagatuck, each of which takes approximately 2 hours, as well as other runs to occasional customers which are not made on a daily basis.

There were approximately 22 employees in the plantwide unit at the time of the hearing. Maintenance employees and truckdrivers are supervised by the master mechanic, while production employees and employees in the utility classifications are under the immediate supervision of the foreman-chief chemist. New employees are originally classified as utility or as truckdriver-utility, and are thereafter advanced to regular job classifications. When business needs require more truckdrivers, employees are transferred from the truckdriver-utility group and, similarly, when business is slack, truckdrivers are transferred to the truckdriver-utility category and employed in nondriving duties. All employees have plantwide seniority and are subject to the same company benefits and general working conditions.

Employees classified as truckdriver-utility engage in such activities as painting, waterproofing, erection of scaffolds, the cleaning of sulphur pits, and truck maintenance and repair. Truckdrivers also engage in the foregoing activities in some instances where their assigned runs are completed prior to the end of their working day. However, these truckdrivers frequently complete their working day by taking out trucks on short runs or by assisting in the loading of trucks

tractual interest. The Employer and the Intervenor entered into a contract on September 1, 1954, to run until September 1, 1956, and from year to year thereafter absent 60 days' written notice by either party. The parties agree that this contract does not constitute a bar to the instant case.

which other truckdrivers will take out on runs later in the day. They also help to unload their own deliveries.

The record indicates, and we find, that, until the commencement of the steel strike in the early part of July 1956, the five employees then classified as truckdrivers had, in fact, spent most of their time in driving tank trucks. While all of the employees except one were assigned nondriving duties for the period from the beginning of the steel strike to the date of the hearing, this arrangement was presumably a temporary one.⁴

It is clear from the record that, under normal conditions, the employees here sought spend a major part of their working time in actual driving and in loading and unloading trucks. The Board recently held that employees who spend most of their time in "actual driving" constituted a functionally distinct group, and were entitled to separate representation.⁵ The Board did not, however, intend to imply that the proportion of time spent in actual operation of the vehicle was the sole criterion for determining the appropriateness of a separate unit of drivers. Time spent by the drivers in loading and unloading trucks, which is a normal incident of a driver's duties, will also be considered, in addition to actual operating time, and where the aggregate time spent on all these functions preponderates over time spent in other duties, we will accord to the drivers the right to separate representation.

Accordingly, as the instant drivers spend a major part of their time in driving and in loading and unloading trucks, which latter functions we deem to be incidental to driving, we find that these employees constitute a functionally distinct group such as the Board has traditionally accorded the right of self-determination, notwithstanding a history of bargaining on a broader basis. Furthermore, the Petitioner is a union which has historically represented truckdrivers. We find therefore, that the Employer's truckdrivers may, if they so desire, constitute a separate appropriate unit for the purposes of collective bargaining.⁶

The Petitioner further requests that the Board determine whether the classification of pickup truckdriver should be included in the unit. As the record shows that no employee spends a substantial part of his time as a pickup driver or is so classified, but rather that the pickup truck is used incidentally by many employees as needed, we do not pass upon the unit placement of pickup truckdrivers.

⁴ The steel strike caused a suspension of deliveries to virtually all the Employer's customers.

⁵ *Interchemical Corporation*, 116 NLRB 1443

⁶ To the extent that *Richmond Engineering Company, Inc.*, 108 NLRB 1659, and *American Can Company*, 108 NLRB 1657, are inconsistent with this decision, they are hereby overruled.

We shall direct an election among the following group of employees: All truckdrivers at the Employer's Painesville, Ohio (Painesville Works), plant, excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

We shall make no final unit determination at this time, but shall be guided in part by the desires of the employees as expressed in the election hereinafter directed. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election is instructed to issue a certification of representatives to the Petitioner for the employees in the group described in paragraph numbered 4, above, which the Board, in such circumstances, finds to be appropriate for purposes of collective bargaining. In the event that a majority do not vote for the Petitioner, the Regional Director will issue a certification of results of election to such effect.⁷

[Text of Direction of Election omitted from publication.]

⁷ Inasmuch as the Intervenor is not in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act, its name will be omitted from the ballot.

National Organization Masters, Mates and Pilots of America, Inc. AFL-CIO; and National Marine Engineers Beneficial Association, AFL-CIO; and National Maritime Union of America, AFL-CIO; and Rivers Joint Organizing Committee; and their Agent Gordon C. Knapp and J. W. Banta Towing Company, Inc. and Plaquemine Towing Corporation. Case No. 14-CB-291. December 18, 1956

DECISION AND ORDER

On January 9, 1956, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in any unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the General Counsel and the Charging Parties filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹ The rulings are hereby affirmed. The Board has considered the Inter-

¹ The Charging Companies contend that the Trial Examiner's conduct of the hearing and presentation of facts in the Intermediate Report show that he was prejudiced. We have carefully examined the record and the Intermediate Report and find no evidence that the Trial Examiner was prejudiced.