

**Publicker Chemical Corporation, a subsidiary of Publicker Industries, Incorporated and Joseph Bishop, Petitioner**

**Construction & General Laborers Local Union No. 576, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO and Maintenance Insulators and Asbestos Workers Union of Kentucky, Inc., Petitioner. Cases Nos. 9-UD-6 and 9-RC-2935. January 31, 1957**

### DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) and Section 9 (e), respectively, of the National Labor Relations Act, a consolidated hearing was held before Harold V. Williams, 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 these cases, 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. *Case No. 9-UD-6*: In this case, the Petitioner seeks to rescind the authority of the Union, hereinafter sometimes referred to as the Laborers, to make a union-security agreement in behalf of an alleged bargaining unit of laborers and janitors in the maintenance department of the Employer's Louisville, Kentucky, plant. The Union moved to dismiss the petition on the ground, *inter alia*, that the unit alleged in the petition is not coextensive with the bargaining unit covered by the existing union-security agreement. We find merit in the Union's contention.

In 1955, the Laborers, representing the Employer's laborers and janitors, and several other labor unions, acting in behalf of certain other groups of the Employer's maintenance employees, negotiated a 2-year contract with the Employer, effective June 1, 1955. The negotiations were conducted for a number of these unions, including the Laborers, by the Louisville Building and Construction Trades Council, pursuant to a pattern of joint bargaining which had been established between these unions and the Employer's predecessor in 1952. It appears that at the conclusion of such joint negotiations an individual contract consistent with the terms of the master agreement was offered to each of the participating unions covering employees represented by each. Although the copy of the above-mentioned 1955 master agreement introduced in evidence is unsigned, it is not denied that such contract was put into effect by all the parties thereto. This contract, pursuant to its terms, was reopened in mid-1956. At that

time, the Trades Council, representing the same contracting parties, negotiated with the Employer a supplemental agreement covering wage increases and a union-shop provision to replace the checkoff provision in the existing agreement. The record indicates that, following the established pattern, individual supplements consistent with the joint supplemental agreement were offered to each of the unions bargaining through the Trades Council. The individual supplement signed by the Laborers and introduced in evidence, refers to the existing agreement and sets forth the union-security provisions and the wage increases for the laborers and janitors. Apparently, similar amendments were executed by the other unions which were represented in the supplemental negotiations by the Trades Council. Upon the basis of the foregoing and the entire record in this case, we find that the bargaining unit covered by the existing union-security agreement comprises all maintenance department employees of the Employer represented by the Laborers and other unions which, through the Trades Council, jointly negotiated the supplemental agreement. Accordingly, as the unit alleged in the petition is not coextensive with the broader unit covered by the union-security agreement, we find that it is inappropriate for the purposes of a deauthorization election.<sup>1</sup> We shall therefore grant the Union's motion to dismiss the petition.

*Case No. 9-RC-2935:* In this case, 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 Case No. 9-RC-2935, the Petitioner, Maintenance Insulators and Asbestos Workers Union of Kentucky, Inc., seeks to represent a unit of insulators at the Employer's Louisville, Kentucky, plant. As these employees have no history of collective bargaining and comprise the only unrepresented employees in the plant, they may properly form an appropriate unit on a residual basis.<sup>2</sup>

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act: All insulators employed by the Employer at its Camp Ground Road, Louisville, Kentucky, plant, excluding the pusher insulator,<sup>3</sup> office and plant clerical employees, professional employees, guards, all other employees, and all other supervisors as defined in the Act.

[The Board dismissed the petition filed in Case No. 9-UD-6.]

[Text of Direction of Election omitted from publication.]

<sup>1</sup> Cf. *F. W. Woolworth Company*, 107 NLRB 671, 673, and cases cited in footnote<sup>3</sup> 3 thereon.

<sup>2</sup> There was no disagreement among the parties as to the unit.

<sup>3</sup> In view of the clear record testimony that the pusher in the insulator group possesses and has exercised the power effectively to recommend the hire and discharge of employees working under him, we find that he is a supervisor as defined in the Act. He is therefore excluded from the unit.