Certainly any rule of law to the effect that facts once established are presumed to continue does not apply to the determination by a quasi-judicial tribunal of its right to adjudicate a given matter at a given time.[12]

The Board in its investigation of this case had the statutory right to subpena all pertinent evidence and failed to exercise this right. I see no justification, therefore, in presuming to be jurisdictional facts, materials that are not in this record but in the record of a case litigated 8 years ago. Accordingly, I would remand this case for appropriate further investigation in conformity with our usual practice.

[12] ". . . such generalizations, useful enough, perhaps, in solving some problem of a particular case, are not rules of law to be applied to all cases, with or without reason." *Maggio* v. *Zeitz*, 333 U. S. 56, 65.

The cases cited by the majority in support of this rule (*supra*, footnote 3) are not applicable. In both the *Boswell* and *Tex-O-Kan Flour Mills* cases, the Board made specific findings of jurisdictional facts based upon what appears to be the most current figures available (26 NLRB 765, 768; 35 NLRB 968, 974 (C. A. 5)). The court's affirmance of these findings in the *Tex-O-Kan* case stressed that the information was, in fact, the "last apparently for which the record had been made up" (122 F. 2d 433, 436); and significantly the *Boswell* findings were presumed by the court not to have changed "in the following month" (136 F. 2d 585, 589). The facts in the *Whittier Mills* case that were presumed by the court to have continued involved substantive matters having no bearing upon the Board's jurisdiction. 111 F. 2d 474, 478 (C. A. 5)

There is, of course, an obvious distinction between the Board taking official notice of contemporaneous facts as it did in the two cases in which I participated (footnote 3, majority opinion) and presuming to be contemporaneous in 1957, as it does here, facts established in 1948.

Arden Farms; Bordens Capital Dairy; Carnation Co.; Golden State Co. Ltd.; Challenge Cream & Butter Association; Crystal Cream and Butter Company; Inderkums Dairy; and Taylor's Dairy[1] ***and*** **Office Employees International Union, Local No. 29, AFL–CIO, Petitioner**

Golden State Co. Ltd. ***and*** **Chauffeurs, Teamsters & Helpers, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO, Petitioner**

Arden Farms ***and*** **Chauffeurs, Teamsters & Helpers, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO, Petitioner.** *Cases Nos. 20–RC–3155, 20–RC–3162, and 20–RC–3164. February 5, 1957*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before L. D. Mathews, Jr.,

[1] At the hearing, without objection, the petition in Case No. 20–RC–3155 was amended to substitute Crystal Cream and Butter Company for Home Milk and Ice Cream Co.

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. Golden State Co. Ltd. and Arden Farms are engaged in commerce within the meaning of the Act. In view of the unit finding below, we do not pass upon whether the Association and its members, other than Golden State Co. Ltd. and Arden Farms, are engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.[2]

3. In Case No. 20–RC–3155, no question concerning representation exists. However, in Cases Nos. 20–RC–3162 and 20–RC–3164 questions affecting commerce do exist concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Employers and Local 29 contend that a multiemployer unit of office clerical employees of all the Employers in Case No. 20–RC–3155 is appropriate. Local 150 seeks separate units of the office clerical employees of two of these Employers, contending that only single-employer units are appropriate.

In support of their position, the Employers and Local 29 point to the facts that recently all of the Employers joined an employer association, Sacramento Valley Associated Industries, held meetings under the auspices of the association, and decided at these meetings that they would like to bargain on a multiemployer basis through the association. However, there is no history of collective bargaining with respect to the office clerical employees of the Employers, and the record does not show that there is any history of collective bargaining on a multiemployer basis with respect to any other employees of the Employers. It is well established that presumptively a single-employer unit is appropriate, and to defeat a claim for such a unit in favor of a broader unit a controlling history of collective bargaining on the broader basis must exist.[3] Accordingly, in the absence of any history of collective bargaining on a multiemployer basis with respect to employees of the Employers, we find that the single-employer units sought by Local 150 are appropriate.[4] We shall, therefore, direct elections in these single-employer units, and dismiss the petition in Case No. 20–RC–3155 for a multiemployer unit.

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[2] The Petitioner in Cases Nos 20–RC–3162 and 20–RC–3164, herein called Local 150, intervened in Case No 20–RC–3155 on the basis of a showing of interest The Petitioner in Case No 20–RC–3155, herein called Local 29, intervened in Cases Nos 20–RC–3162 and 20–RC–3164 on the basis of a showing of interest

[3] *Rambo Bread Co*, 92 NLRB 181

[4] See *Rambo Bread Co*, *supra* Cf *Peninsula Auto Dealers Association*, 107 NLRB 56, where the Board found a multiemployer unit of salesmen appropriate because there had been a successful history of collective bargaining on such a basis with respect to substantially all other employees of the employers

There remains for consideration the question of whether the following employees of Golden State Co., Ltd., should be included in the unit of that Employer's employees or excluded therefrom:

Robert White, *Melvin Hunter*, *Rolla Gish*, and *Harold Fish* are classified, respectively, as accountant grade III, accountant grade II, product clerk, and accountant trainee, and they all do accounting work. There is no evidence that any of them is required to be, or is, a certified public accountant or college graduate. Accordingly, we find that they are not professional employees as defined in Section 2 (12) of the Act.[5] Some of their work requires reference to the employee payroll, but in the absence of evidence that they assist or act in a confidential capacity to any person who formulates, determines, and effectuates management policies in the field of labor relations, their access to such data and to other financial and business data does not render them confidential employees.[6] Nor is there any evidence that they are supervisors. Accordingly, we shall include these four employees in the unit.

Manthea Marmas is classified as payroll clerk, and as such she prepares the payroll. She also maintains personnel records and prepares "personnel action" forms. The mere fact that she has access to personnel matters does not render her a confidential employee.[7] Accordingly, we shall include her in the unit.[8]

We find that the following employees of the Employers in Cases Nos. 20–RC–3162 and 20–RC–3164 constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All office clerical employees of Arden Farms in Sacramento, California, excluding the office manager, the credit manager,[9] confidential employees, managerial employees, and supervisors as defined in the Act.

2. All office clerical employees of Golden State Co., Ltd., in Sacramento, California, including Robert White, Melvin Hunter, Rolla Gish, Harold Fish, and Manthea Marmas, but excluding confidential employees,[10] managerial employees, and supervisors as defined in the Act.[11]

[The Board dismissed the petition in Case No. 20–RC–3155.]

[Text of Direction of Elections omitted from publication.]

[5] See *The B. F. Goodrich Company*, 115 NLRB 722, 723

[6] See *Walgreen Company*, 114 NLRB 1168, 1170, 1171

[7] See *Walgreen Company supra*, at 1170

[8] See *The B. F. Goodrich Company*, *supra*, at 725

[9] The parties stipulated to these exclusions

[10] In accordance with the stipulation of the parties, we exclude Maxine Schultz as a confidential employee

[11] The parties stipulated, and the record shows, that the district office manager, the office supervisor, and the order department supervisor are supervisors as defined in the Act