

between agricultural and nonagricultural pursuits. Accordingly, we find that since the employees in this case spend upwards of 70 percent of their time during the year in nonagricultural employment, they are properly included in the unit found appropriate.⁴

Accordingly, we find that the following employees at the Employer's Watsonville, California, processing plant constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9.(b) of the Act: All production and maintenance employees, excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁴To the extent that *Clinton Foods, Inc.*, *supra*, and subsequent cases are inconsistent with this decision, they are hereby overruled. We find it unnecessary to lay down a general rule in this case as to what proportion of time spent in nonagricultural work is necessary for inclusion in the unit.

Westinghouse Electric Corporation and Local 68, International Union of Operating Engineers, AFL-CIO, Petitioner. Case No. 2-RC-8403. March 1, 1957

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 Julian J. Hoffman, 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 organizations named below claim to represent certain employees of the Employer.¹
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 moved to dismiss contending that its current contract with the Employer is a bar to the petition for the unit of power-house employees sought by the Petitioner. The Employer takes no position on this issue.

The Intervenor has been the bargaining representative of the Employer's production and maintenance employees including the employees sought herein for a number of years. The last contract, effective through October 14, 1956, and containing a provision for

¹ Local 410, International Union of Electrical, Radio & Machine Workers, AFL-CIO, herein called Intervenor, was permitted to intervene on the basis of its contract with the Employer covering the employees herein involved.

automatic annual renewal absent written notice to terminate 60 days before the termination date, was extended on March 20, 1956, through October 14, 1960. The *Mill B* date of the contract on which the automatic renewal would have become operative was August 16, 1956. The petition herein was filed the day before, on August 15, 1956.

The Intervenor argues that the petition was untimely filed because the Employer had no notice of the filing of the petition prior to the automatic renewal or *Mill B* date of that contract. We do not agree. As the petition herein was filed the day before the *Mill B* date, it was timely filed in accord with well-established Board precedent.² The fact that the Employer did not have knowledge of the petition prior to the *Mill B* date is without controlling effect. While notification to an employer of the filing of a petition within the period provided by the contract may be desirable, we are of the opinion that the timely filing of a petition is sufficient to prevent automatic renewal of an existing contract from constituting a bar to an investigation and certification of representatives.³ Furthermore, the March 10, 1956, extension agreement constitutes a premature extension of the earlier contract and as such is not a bar to the petition filed timely with respect to the original contract.⁴ Accordingly, we deny the Intervenor's motion.

4. The Petitioner seeks to sever a unit of powerhouse engineers from the existing production and maintenance unit at the Employer's lamp base manufacturing plant in Belleville, New Jersey. The Intervenor opposes severance on the ground that the unit sought is inappropriate and would destroy the traditional bargaining pattern at this plant.

The employees sought are classified as watch engineers, first class. They tend boilers, check water levels and burners, tend and maintain air compressors, electric generators, and related equipment. They work in a separate powerroom located in the central part of the plant and occasionally work on equipment related to power service in other parts of the plant. They are required to be licensed by the State. While these employees work under the same supervision, have the same general conditions of employment, and receive the same benefits as other employees, they do not interchange jobs with other employees and other employees do not work in the powerroom. In addition, the Petitioner is a union which traditionally represents powerhouse employees.

Under these circumstances, and on the entire record, it is clear that the watch engineers, first class, constitute a functionally distinct

² *Wyman-Gordon Co.*, 117 NLRB 75; *Rathbun Molding Corporation*, 116 NLRB 1002; *Bethlehem Pacific Coast Steel Corporation*, 114 NLRB 1197.

³ *Portland Lumber Mills*, 56 NLRB 1336. Cf. *Anheuser-Busch, Inc., et al.*, 116 NLRB 186, wherein notice to the contracting parties was required. However, that case involved a newly negotiated and executed contract and is distinguishable from the instant case which involves an automatically renewable contract.

⁴ *Wyman-Gordon Co.*, *supra*; *Stubnitz Greene Corporation*, 116 NLRB 965; *Congoleum-Nairn, Inc.*, 115 NLRB 1202.

group of employees with related duties and interests of the sort which the Board has consistently found may be severed from an existing production and maintenance unit if they so desire, despite a bargaining history on a broader basis.⁵

Accordingly, we find that the following employees may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All watch engineers, first class, employed by the Employer in the powerroom at its Belleville, New Jersey, plant, excluding all other employees, guards, professional employees, and supervisors within the meaning of the Act.

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 directed herein is instructed to issue a certification of representatives to the Petitioner for the unit described in paragraph numbered 4, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority do not vote for the Petitioner, these employees shall remain a part of the existing unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

⁵ *Botany Mills, Inc.*, 115 NLRB 1497; *American Bosch Arma Corporation*, 115 NLRB 226; *Industrial Rayon Corporation*, 107 NLRB 1518. Also see *Westinghouse Electric Corporation*, 108 NLRB 556.

Sears Roebuck and Co. and Office Employees International Union, Local 130, AFL-CIO, Petitioner. *Cases Nos. 14-RC-2987 and 14-RM-135. March 4, 1957*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued herein on July 12, 1956,¹ an election was conducted on August 10, 1956, under the direction and supervision of the Regional Director for the Fourteenth Region, among the employees in the unit heretofore found appropriate. Upon the conclusion of the election, the parties were furnished a tally of ballots. The tally showed that of the approximately 63 eligible voters, 54 cast ballots, of which 26 were for the Petitioner, 15 were against the Petitioner, and 13 were challenged.

On August 30, 1956, the Employer filed timely objections to the election. As the challenged ballots were sufficient in number to affect

¹ Not reported in printed volumes of Board Decisions and Orders.
117 NLRB No. 73.