by others. Nor is it clear what proportion of his time is spent in the die department. Under these circumstances, we have insufficient basis for determining the unit placement of the die storage employee. We shall, therefore, permit him to vote subject to challenge in the election hereinafter directed.

We find that the following employees at the Employer's plant located in Endicott, New York, may, if they so desire, constitute a separate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees in the die department, including the tool crib attendant,[9] but excluding the sweeper, all other employees and all supervisors as defined in the Act.

We shall not, however, make a final unit determination at this time. If a majority of the employees vote for Petitioner in the election directed herein, 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 unit described above, which the Board, in such circumstances, finds to be appropriate for the purposes of collective bargaining. If, on the other hand, a majority of the employees in the voting group vote for the Boilermakers, the Board finds that they may continue to be represented as 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.]

[9] As stated above, the die storage employee will be permitted to vote subject to challenge.

Wiedemann Machine Company *and* United Electrical, Radio and Machine Workers of America (U. E.), Petitioner. *Case No. 4–RC–3398. October 15, 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 Joseph C. Kelly, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

[1] The hearing officer referred to the Board a motion made by the Intervenor at the hearing to dismiss the instant petition on the ground that it was prematurely filed. For reasons stated hereinafter in paragraph numbered 3, below, this motion is hereby denied.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

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

3. The Intervenor contends that the petition in this case should be dismissed because it was prematurely filed with respect to an existing contract between the Intervenor and the Employer. The record shows that the Employer and the Intervenor executed a contract on December 20, 1955, effective from November 1, 1955, to October 31, 1957, and from year to year thereafter absent 60 days' written notice by either party of a desire to terminate or modify the contract. The Petitioner, by telegram dated May 23, 1957, requested recognition by the Employer as exclusive bargaining representative for its production and maintenance employees. By letter dated May 29, 1957, counsel for the Employer informed the Petitioner that its demand for recognition had been refused. Thereafter, on June 3, 1957, the Petitioner filed its petition in the case at bar. As the petition was filed within 3 months of the *Mill B* date of the existing contract,[3] and as such date has, in any event, been reached, we find that the contract is no bar. Accordingly, we find that 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, a Pennsylvania corporation, is engaged in the manufacture of turret punch presses and in heat treat work and job shop work at its plant located at 4272 Wissahickon Avenue, Philadelphia, Pennsylvania.

The parties are in basic agreement as to the appropriateness of a unit composed of the Employer's production and maintenance employees. However, the Employer would exclude, while the Petitioner and the Intervenor would include, 1 production control employee, 7 quality control employees, and 3 outside servicemen.

There are 16 employees currently classified as production control employees. The Petitioner and Intervenor agree to the exclusion of 15 of these employees as office clerical employees, but would include 1,

[2] District Lodge No. 1, International Association of Machinists, AFL–CIO, herein called the Intervenor, was permitted to intervene in this proceeding on the basis of its contractual interest.

[3] *Home Curtain Corp.*, 111 NLRB 1253. The Intervenor contends that in applying this 3-month rule, the Board should adopt a policy of dismissing petitions filed, as here, within 3 months of the *Mill B* date, where a demand for recognition was made more than 3 months before the *Mill B* date. The Intervenor contends that such a policy is necessary to prevent disruption of normal bargaining relations by premature demands for recognition. We find no merit in this contention.

Henry Manton.[4] The record shows that those production control employees who are excluded by agreement are all salaried personnel who spend the major portion of their time working in an office building which is separate from the production area of the plant. In contrast, Manton is paid an hourly wage rate and spends most of his time in the production area of the plant, where his primary function is the performance of clerical work to expedite the processing of orders. In view of the foregoing, we find that Manton is a plant clerical employee whose interests and working conditions are more closely allied to those of the production and maintenance employees than to those of the other production control employees. Accordingly, we shall include him in the unit.

The seven quality control employees were formerly classified as inspectors and are included in the contract unit. These employees are hourly paid and work entirely in production areas of the plant. Their primary duty is to check finished products against specifications shown on drawings and blueprints and to reject those which do not meet the required standards. The Employer contends that the duties of these employees have changed since the change in their job titles and that they should be excluded from the unit because of a conflict of interest between them and other employees. The Employer alleges that such conflict exists because it is their function to reject unsatisfactory work, and that excessive rejection slips to an individual employee may result in disciplinary action ranging from a denial of a merit wage increase to actual discharge. However, the record shows that the duties of the quality control employees are basically the same now as when they were classified as inspectors, although a few additional duties have been added to their functions and they must now check products to closer tolerances than previously. Contrary to the contention of the Employer, we find that the fact that inspectors may affect the status of employees in the manner outlined above does not warrant excluding them from the unit. We shall, therefore, in accordance with our usual policy, include them.[5]

The four outside servicemen, whom the Employer would exclude, are regular production employees who are sent out on service calls as requested by the Employer's customers, but who spend the major portion of their time in production work.[6] These four employees are in the current contract unit. The Employer states that it plans to set up a new classification of service salesmen who will devote full

[4] The question as to whether Manton is covered by the current contract has been submitted to arbitration. Prior to his transfer to his present position, Manton was engaged in production work and was clearly covered by the contract.

[5] *Palmer Manufacturing Corporation,* 103 NLRB 336, 338; *Gerber Plastic Company,* 113 NLRB 462, 464.

[6] One of these employees is classified as an electrician, one as an "assembler B," and two as "assembler A's."

time to outside sales and service work. However, it is clear that the four employees here in dispute are presently primarily production employees, and that such outside service work as they now perform does not militate against their inclusion in the unit. The fact that one or more of them, as suggested in the record, may be transferred to the new classification of service salesman at some future date is not here material, as it is the nature of the work that these employees are actually performing at this time which is controlling as to their unit placement. We shall, therefore, include them in the unit.[7]

Accordingly, we find that the following employees at the Employer's plant located at 4272 Wissahickon Avenue, Philadelphia, Pennsylvania, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees, including Henry Manton, quality control employees, stockroom employees, truckdrivers and apprentice boys, but excluding all production control employees other than Manton, office clerical employees, draftsmen, foremen, supervisors and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[7] After issuance of the Decision and Direction of Election herein, the parties agreed to exclude outside servicemen.

Frank S. Owens Co., Mid-States Marine Oil Co., Owens-Illinois Oil Co., Owens-Iowa Oil Co., Owens-Wells Oil Co., Owens-Indiana Oil Co., and Owens-Missouri Oil Co.[1] ***and*** **Chauffeurs, Teamsters and Helpers, Local No. 26, AFL–CIO, Petitioner.**
Case No. 13–RC–5589. October 15, 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 Virginia M. McElroy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

Upon the entire record in this case, the Board finds:

1. The Frank S. Owens Company, herein called Owens Co., contends that the Board does not have jurisdiction over its operations.

[1] The caption in this proceeding is hereby amended to conform with our finding below that the various Owens enterprises constitute a single employer.