

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 [Members Rodgers, Bean, and Jenkins].

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 organization involved claims to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act, for the following reason:

The Union was certified on August 17, 1956. The instant petition was filed on August 5, 1957, within the certificate year. Accordingly, for this reason alone, without regard to any of the contentions made by the Union, we shall dismiss the petition. *Centr-O-Cast & Engineering Company*, 100 NLRB 1507.

[The Board dismissed the petition.]

Aeroguild, Inc. and Local 212, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, Petitioner. *Case No. 7-RC-3418.*
November 4, 1957

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election executed by the parties on February 26, 1957, an election by secret ballot was conducted on March 8, 1957, under the direction and supervision of the Regional Director for the Seventh Region among employees in the unit herein found appropriate. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 48 eligible voters, 24 cast ballots for the Petitioner, 22 cast ballots against the Petitioner, and 2 cast challenged ballots.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director caused an investigation to be conducted in accordance with the Rules and Regulations of the Board. On July 25, 1957, the Regional Director issued and served on the parties his report on challenged ballots in which he recommended that the challenge to the ballot of Raymond Carter be sustained and that the Petitioner be certified, as the remaining challenged

ballot, which he found to have been cast by an eligible employee, was insufficient to affect the results of the election. Thereafter, the Employer filed exceptions to the Regional Director's recommendation that the challenge to the ballot cast by Carter be sustained.

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].

The Board has considered the Regional Director's report and the Employer's exceptions thereto and upon the entire record in this case finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
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. In agreement with the stipulation of the parties, the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees of the Employer located at Van Dyke, Michigan, including plant clerical employees and shipping and delivery employees, but excluding office clerical employees, confidential employees, professional employees, guards, and all supervisors as defined in the Act.

Carter works for the Employer as a drill-press operator on the day shift and performs additional services for the Employer during weekends and the 2-hour period between the night and day shifts when the plant is not in operation. The Employer excepts to the Regional Director's finding that these additional duties constitute Carter a guard within the meaning of the Act.

The Employer's burglar-detection system for the plant is wired to an alarm in a house rented by Carter which is adjacent to the plant. It is Carter's duty to notify the police or fire department and the Employer when the alarm sounds. The Employer contends that this constitutes the extent of his off-hours duties, that he has no authority to bar entry to the plant, to investigate an emergency signaled by the alarm, or to enter the premises except during his working hours. In its brief to the Regional Director, however, the Employer states that Carter is not to enter the plant "except in the case of an emergency (i. e., if the burglar alarm rings)." And the Employer's sales and production manager, in an affidavit, stated that Carter is not authorized to enter

the plant “unless there is an emergency in which case he is expected to investigate the emergency and then notify the police or fire department” and the Employer. While Carter himself did not mention whether he would investigate the cause of an alarm, his statement that he was expected to call the Employer and the police or fire department indicates that he would at least determine which type of emergency—unauthorized entry or fire—existed. The Employer’s sales and production manager also stated that “in the rare event of anyone desiring access to the plant during non-working [hours], Carter is instructed not to allow any entry to the plant.” Carter stated that he had been asked to “keep an eye on” neighborhood children to prevent vandalism and to prevent anyone other than employees from using the parking lot at night, although the lot is not yet in usable condition.

The Board has found a watchman whose duties were limited to making plant rounds and notifying the proper authorities upon discovering anyone breaking into the plant to be a guard.¹ We do not believe that Carter’s functions and duties are essentially different because he is initially apprised of an unauthorized entry into the plant by means of the burglar-alarm system, rather than by personal observation of such a break-in while making rounds at the plant. Nor does the manner in which the Employer compensates Carter for these services—the Employer pays his landlord a part of his rent each month rather than paying Carter directly—detract from the fact that plant-protection functions constitute a regular part of Carter’s employment duties. In view of the foregoing, we find Carter to be a guard within the meaning of the Act.

Accordingly, we find the Employer’s exceptions to be without merit and hereby sustain the challenge to the ballot of Raymond Carter, in accordance with the Regional Director’s recommendation. As the remaining challenged ballot, cast by George Wolf, could not affect the results of the election and as the tally of ballots, revised in accordance without decision herein, shows that a majority of the valid ballots were cast for the Petitioner, we shall not direct that the ballot of George Wolf be opened but shall certify the Petitioner as the collective-bargaining representative of the employees in the unit found appropriate herein.

[The Board certified Local 212, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, as the designated collective-bargaining representative of the employees of the Employer in the appropriate unit.]

¹ *General Shoe Corporation*, 114 NLRB 381. Compare *A. D. T. Company*, 112 NLRB 80; *Louis F. Dow Company*, 111 NLRB 609; *General Shoe Corporation*, 113 NLRB 905; *Sidney Blumenthal & Co.*, 113 NLRB 791.