are sent out regularly and frequently to the smaller stations where there are no chief clerks to substitute for and relieve the freight agent during the latter's absence. We find on the basis of the evidence that the freight agents and relief agents are managerial employees and exclude them from the unit.[8]

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

All clerks, secretaries, stenographers, office machine operators, PBX operators,[9] clerical, and office employees in the offices and freight depots of the Employer employed in the geographical area of Arkansas, Colorado, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, excluding professional employees, confidential employees, executives, managerial employees, over-the-road drivers, local cartage drivers, mechanics, garagemen, dock employees, watchmen, guards, and all supervisors as defined in the Act.[10]

[Text of Direction of Election omitted from publication.]

[8] *Gulf States Telephone Company*, 118 NLRB 1039

[9] The record shows that the chief PBX operator has two operators including the relief operator under her She receives 3 cents an hour more than the operators she trains and instructs and has been covered by the contract The uncontradicted evidence shows that she has effectively recommended hiring and discharge, and has disqualified individuals for jobs 2 or 3 times in the past year and a half, and that she has recommended that persons be docked or reprimanded We find on the basis of the above that the chief PBX operator is a supervisor within the meaning of the Act

[10] At the hearing the Employer appears to have urged that the following employees should be excluded head multilith personnel clerk, utility accounting clerk, the bookkeeper and the claims prevention clerk. However, in its brief, the Employer concedes that these clerks have neither confidential nor supervisory functions As there is no evidence in the record to warrant a finding of supervisory status, we shall include these employees in the unit

---

Wallace Stenlake and John Baldwin d/b/a New Pacific Lumber Co.,[1] Petitioner *and* Building Material and Dump Truck Drivers, Local Union No. 420 and Lumber & Sawmill Workers, Local No. 2288, Los Angeles County District Council of Carpenters.[2] *Case No. 21–RM–446. January 14, 1958*

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 William G Wilkerson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The Employer's name appears as corrected at the hearing

[2] Herein called Local No 420 and Local No 2288, respectively

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 Rodgers and Bean].

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

1. The Unions contend that the Board should not assert jurisdiction herein because (a) the Employer is engaged in retail trade, and (b) its volume of business is insufficient to meet the Board's jurisdictional standards for a retail enterprise.

The Employer is engaged in the sale of lumber and other building materials. During 1956 its gross sales were approximately $600,000. About one-third of this amount represented "over-the-counter" retail sales. Another third represented sales to building contractors. The remaining third consisted of sales to industrial firms.

Contrary to the Unions' contention, we find that the Employer's sales to building contractors and to industrial firms are nonretail for purposes of applying our jurisdictional standards.[3] Since it is Board policy to use the nonretail standards wherever an employer's enterprise, as here, is a combination of retail and nonretail operations, and the nonretail operations exceed *de minimis*,[4] we shall use those standards in the instant case. It is clear that the Employer does not have sufficient inflow or direct outflow to meet those standards. However, the record shows that in 1956 the Employer made $113,000 worth of sales to enterprises within the State, each of which, in turn, shipped goods outside the State valued at more than $50,000. Accordingly, we find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction herein.[5]

2. For reasons stated below, we find that the labor organizations involved claim to represent certain employees of the Employer.

3. The Unions contend that the petition should be dismissed on the ground that they do not claim to represent a majority of the employees of the Employer. The Employer asserts that the current picketing of its plant is inconsistent with such disclaimer, while the Unions contend that the picketing is merely for the purpose of organizing the Employer's employees.

---

[3] See *J. S. Latta & Son*, 114 NLRB 1248.

[4] *The T. H. Rogers Lumber Company*, 117 NLRB 1732.

[5] *Jonesboro Grain Drying Cooperative*, 110 NLRB 481. The record shows that California has a retail sales tax. In 1956 the Employer classified $66,000 of its sales as wholesale for purposes of exemptions from this tax, upon being furnished a retail sales certificate by its purchasers. The Unions contend, in effect, (a) that inasmuch as this amount represents only about 10 percent of the Employer's total sales, the Board should apply its retail standards, and (b) that even under the Board's nonretail standards this amount is less than the prescribed minimum of $100,000. As to (a), it suffices that $66,000 is more than *de minimis*. As to (b), the record shows that the Employer is entitled to an exemption from the retail sales tax only with respect to an article which is to be resold by the Employer's customer. (Deering's Calif. Code Annot., secs. 6051–6095.) Presumably, the difference between $66,000 and the $113,000 figure in the text, *supra*, represents materials sold to industrial firms or building contractors for use by them and not for resale. While such sales would be subject to the retail sales tax, they would, nevertheless, constitute indirect outflow for purposes of our standards.

The record shows that on March 27, 1957, an employee of the Employer contacted a representative of Local No. 2288, and informed him that the employees would be interested in securing representation. This representative and an agent of Local No. 420 went to the plant and secured seven cards designating the Unions as bargaining representatives. Upon being informed by an employee that this represented a majority of the employees, the union agents advised the Employer that they represented a majority of the employees and requested recognition. The Employer did not at that time dispute the claim of majority nor was any proof offered by the Unions. Each of the representatives gave the Employer a copy of his Union's standard contract covering the employees within its jurisdiction. The meeting was terminated on the note that the matter of recognition and acceptance of the contracts would be considered. Thereafter, the union representatives were advised by the Employer that the matter had been referred to a labor relations consultant.

On April 1, 1957, the Employer filed the instant petition, and on April 15 the Unions established a picket line at the Employer's plant. The picket signs at that time merely stated "AFL–CIO Picket," and listed the names of the following unions: Lumber and Sawmill Workers No. 2288, Building Material Drivers No. 420, L. A. County District Council of Carpenters, and L. A. Building Trades Council. It is admitted by the Unions that the purpose of the picketing at this time was to obtain recognition for themselves.

On May 8, 1957, a notice of hearing was issued in this proceeding. On May 10, the Unions filed unfair labor practice charges against the Employer, alleging, *inter alia*, that it had refused to bargain with them. On May 20, the Employer in turn filed unfair labor practice charges against the Union alleging an unlawful demand for a union-security clause by a minority union.

On or about July 24, 1957, at the conclusion of his investigation of these charges, a Board agent advised the Unions that the Employer had several regular part-time employees who, in his opinion, were part of the appropriate unit, and that, when these were added to the Employer's full-time employees, the designation cards submitted by the Unions to support their unfair labor practice charges represented less than a majority of the employees in the unit. The Board agent also concluded that the Employer's charges against the Unions were valid on the basis that the contracts submitted to the Employer by the Unions contained union-security provisions, although the Unions did not represent a majority of the employees.

The Board agent therefore proposed the execution of settlement agreements by both parties. On July 24, 1957, a bilateral settlement agreement disposing of the Unions' unfair labor practice charges against the Employer was executed by the parties and approved by

the Regional Director. The Unions on that date also signed the proposed settlement agreement relating to the Employer's charges against the Unions, but the Employer, up to the time of the hearing, had refused to execute this agreement on the ground that it did not provide for the cessation of picketing.

Concurrently with the Unions' execution of the two settlement agreements, the picket signs were altered. On the back of the above-mentioned signs the following statement was added: "Teamsters Local 420 and Lumber & Sawmill Workers No. 2288 Want Employees of New Pacific Lumber Co. To Join Them To Gain Union Hours, Wages and Working Conditions."

On August 26, 1957, the Regional Director issued a second notice of hearing. By letter dated August 23, 1957, Local No. 420 advised the Employer that, in view of the addition of the part-time employees to the unit, the Unions now withdrew their claim to represent a majority of the Employer's employees; that the Unions had indicated their good faith by executing the settlement agreements; that they had been informed that the Board would proceed to a hearing on the instant petition; and that the purpose of the picketing, as now indicated by the picket signs, was merely to organize the employees.[6]

The Unions assert that their demand, and subsequent picketing, for recognition was based on a good-faith belief as to their majority status among the employees. They contend that, once they were apprised of their apparent lack of majority status, they changed the purpose of their picketing to an attempt to organize the employees and so informed the Employer.

The Unions' denial that it now claims to represent the employees would be sufficient to remove the question concerning representation necessary to support the Employer's petition, provided that such disclaimer is clear and unequivocal and the Unions are not currently engaged in conduct inconsistent with such disclaimer.[7]

In *Francis Plating*, *supra*, the Board found that, even in the absence of a prior demand for recognition, picketing by a union with a sign similar to that here used was inconsistent with the union's disclaimer of any interest in representing employees and was tantamount to a present demand for recognition.

Here, the circumstances are much clearer. The Unions admittedly began picketing the Employer's premises in order to obtain recognition. Therefore, the issue at hand is whether the purpose of the Unions' picketing was subsequently changed to organization of the employees. The new language added to the back of the original signs was similar to that on the picket signs in the *Francis Plating* case,

[6] A representative of Local No. 2288 testified that he would have sent a similar letter to the Employer on behalf of his Union, but he was on vacation at the time.

[7] See *Francis Plating Co.*, 109 NLRB 35, and cases there cited.

which, for reasons there indicated, we regard as inconsistent with the Unions' disclaimer and as negating any change in the original object of the picketing.

Further, if the Unions were acting in good faith, they were free, once they were informed of their probable lack of majority status, to notify the Employer immediately that they disclaimed recognition as bargaining representative. Instead, Local No. 420 waited an entire month, while the picketing continued, before it sent a letter of disclaimer to the Employer, and then only after it had learned that a hearing would be held in the instant proceeding.

In view of the foregoing, and upon the record as a whole, we find that the current picketing is not solely for the purpose of organizing the employees, but is tantamount to a present demand for recognition of the Unions by the Employer, without regard to their majority status. 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.[8]

4. The parties agree that a production and maintenance unit is appropriate here. They disagree, however, as to the unit placement of an alleged supervisor, McDown, whom the Employer would exclude, and the 3 part-time employees, whom the Employer would include.

In addition to the 2 partners constituting the Employer, 1 of whom is usually present at the plant, there is an admitted supervisor, Lester, who acts as yard foreman and is in charge of approximately 12 employees. Lester is salaried, while McDown is hourly paid. Whenever Lester is present, McDown takes his orders from him and is assigned to various jobs along with the other employees. On the occasions when Lester is absent, such as on vacation or sick leave, McDown will act in his place and take charge of the employees. While acting for Lester, McDown has no authority to hire or discharge employees and all his recommendations to such effect are subject to independent investigation. In any event, assuming that McDown exercises supervisory authority in Lester's absence, we find that this is not sufficient to constitute him a supervisor within the meaning of the Act and we shall include him in the unit as a production employee.[9]

The record shows that 1 of the part-time employees regularly works every other day at the Employer's plant, while the other 2 regularly

[8] The Employer also contends that the Los Angeles County District Council of Carpenters is seeking recognition and should be placed on the ballot on the ground that it is listed as a party to the standard contract submitted by Local No. 2288 to the Employer. A representative of the District Council testified that it automatically became a party to any contract executed by one of its constituent unions and that it was not seeking recognition from the Employer. We find that the District Council is not seeking recognition and we shall not place its name on the ballot.

[9] *Sebastopol Cooperative Cannery,* 111 NLRB 530.

work on weekends. Accordingly, in keeping with our usual practice, we shall include these regular part-time employees in the unit.[10]

We find that the following employees of the Employer 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 at the Employer's El Segundo, California, plant, including the regular part-time employees, shipping and receiving employees, and truckdrivers, but excluding office clerical and professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[10] *Montgomery Ward & Co.*, 110 NLRB 256 at 258.

Chrysler Corporation (Ohio Stamping Plant) *and* International Union of Operating Engineers, Local 821, AFL–CIO, Petitioner.
Case No. 8–RC–3021. January 14, 1958

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 W. R. Griesbach, 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 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 Act.

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

3. The petitioner seeks a maintenance unit including powerhouse employees, at the Employer's new Twinsburg, Ohio, plant. The Employer and the Intervenor move to dismiss the petition on the grounds of contract bar. The current multiplant contract between the Employer and the Intervenor, executed September 1955, effective to June 1, 1958, covers the production and maintenance employees at a number of the Employer's plants located in several States, including the three plants in Detroit where stamping operations are conducted.

[1] International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO, the Intervenor, requested oral argument. The request is hereby denied because the record and the briefs adequately present the issues and positions of the parties.