

As we have overruled the objections to the election, and as the Petitioner has failed to secure a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for United Papermakers and Paperworkers, AFL-CIO, and that said labor organization is not the exclusive bargaining representative of the employees of the Stark Industrial Park, Charleston, South Carolina, plant of The American Sugar Refining Company (Domino Bag) in the unit found appropriate.]

Norman Weaver and Harold Weaver, Partners, d/b/a Weaver Motors; Galesburg Lincoln-Mercury Co.; J. E. Trapp, R. A. York, and John McCreery, a partnership d/b/a McCreery Motor Sales; Crown Motors, Inc.; Inman-Swanson Motors, Inc.; Puckett Buick Company, Petitioners and Local Union No. 15, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers and Lodge No. 2085, International Association of Machinists, AFL-CIO. Cases Nos. 13-RM-411, 13-RM-412, 13-RM-413, 13-RM-414, 13-RM-415, and 13-RM-416.¹ March 13, 1959

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing² was held before Robert G. Mayberry, 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 National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Rodgers and Bean].

Upon the entire record in these cases,³ the Board finds:

1. In these cases, the Unions either contest the Board's jurisdiction or take no position on this question.

Each of the Employer-Petitioners herein is primarily engaged at Galesburg, Illinois, in the retail sale and repair of automotive equipment. During the year preceding the filing of the petitions,⁴

¹ The Employer-Petitioners in these cases will hereinafter be called, respectively, Weaver, Galesburg Lincoln, McCreery, Crown, Inman-Swanson, and Puckett Buick.

² As it is the Board's practice to consolidate cases for purposes of hearing, where, as here, they have common issues and facts, we overrule the Unions' objection to the consolidation of the instant cases.

³ Because in our opinion the record adequately sets forth the issues and the positions of the parties, the Unions' request for oral argument is hereby denied.

⁴ The petitions herein were filed on October 15, 1958.

each Employer did a gross volume of business in excess of \$500,000, and therefore met the Board's jurisdictional standards for a retail enterprise. We therefore find that each Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over each.⁵

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

3. The Unions move to dismiss the petitions on the ground that they do not claim to represent a majority of the employees of any of the Employers. The Employers assert in effect that the current picketing by the Unions is inconsistent with such disclaimer. The Unions contend that the picketing is merely for the purpose of organizing employees involved herein. The pertinent facts are as follows:

During the spring of 1956, the Unions requested several retail automobile concerns in Galesburg, including Brown Motors, Inc.,⁶ herein called Brown, and all the Employers herein except Crown, to recognize them jointly as the collective-bargaining representatives of their shop employees. In each case recognition was refused. Thereafter, beginning about May 1956, pickets appeared at the places of business of the concerns involved. The signs that the pickets carried read substantially as follows: "Strike—Union Garage Employees Not Working—AFL—CIO," and "Unfair To Organized Labor—No Members Have Been Employed at This Garage Since May 15, 1956—AFL—CIO." The first of these signs was carried at McCreery until about January 1957 and at Puckett Buick and Brown until about August 1957. The record does not disclose how long or at what locations the second sign was carried; it was not being used at the time of the hearing.⁷ From about the beginning of the picketing in May 1956, until about the middle of 1957, there were at one time or another signs at virtually all the locations involved to the effect that Galesburg Trades and Labor Assembly or various local lodges of the Machinists supported the "Auto Mechanics' Strike."

On August 2, 1957, the Board issued its Decision and Direction of Election in *Galesburg Automobile Dealers Association*, Case No. 13—RM—329,⁸ involving some 11 Galesburg retail automobile concerns, including several of the instant Employers, and the same Unions as those involved herein. On August 6, the Regional Director, in accordance with the Decision therein,⁹ dismissed the petition.

⁵ *Carolina Supplies and Cement Co.*, 122 NLRB 88.

⁶ See footnote 10, *infra*.

⁷ The hearing was held on December 2, 3, and 18, 1958.

⁸ Unpublished.

⁹ The Decision conditioned the holding of the election upon the Unions' acceptance of a multiemployer unit. The Unions, however, would not assent to such a unit.

Picketing and other activities continued to be carried on after the issuance of the Board's decision. In the fall of 1957 and in the spring of 1958, pickets at one of Weaver's locations, at Inman-Swanson, at Crown,¹⁰ and at Galesburg Lincoln carried signs indicating that a strike was in progress. Another sign carried at the last-named concern at the same time as the strike sign read: "Unfair to Organized Labor—AFL—CIO." About October 30, 1958, a similar sign replaced the strike sign at Inman-Swanson. From about February or March 1958, until about December 4, 1958, a sign reading "Strike—Teamsters Local 15" was carried at Puckett Buick. On or about December 4, the pickets at this location stopped carrying such sign and began using another reading "No Strike." During the week before the opening of the hearing, a sign bearing the word "Strike" was carried at one of Weaver's plants. At the time of the hearing, held, as noted above, on December 2, 3, and 18, 1958, picketing was being conducted at the premises of all the Employers except those of McCreery; there had been no picketing at McCreery's premises in the last 10 or 12 months.

In April and May 1958, the Unions and the Employers met in efforts to solve their difficulties. On each occasion, the Unions made it clear that a solution would necessarily be based on recognition. In this connection, the record contains two documents: (1) A resolution bearing, among others, the printed signatures of representatives of the two Unions here involved and stating, among other things, that it was passed by unanimous vote of the delegates to the Galesburg Trades and Labor Assembly on April 2, 1958, and that the Unions had been on strike against the new car dealers of Galesburg since May 1956; and (2) a handbill captioned "NOTICE! To All Union Members," stating that several new car dealers, including all the instant Employers, operated nonunion shops and refused to recognize and bargain with the Unions. In April 1958, this handbill was distributed by pickets at the premises of several Galesburg automobile dealers, including those of Galesburg Lincoln, and it was also generally distributed throughout the city.

The Unions in effect admit that their original demands and picketing were for the purpose of recognition. However, they assert that after August 2, 1957, the date of issuance of the Board's Decision and Direction of Election in *Galesburg Automobile Dealers Association, supra*, they changed the purpose of their picketing to an attempt to organize the employees involved. At the hearing,

¹⁰ In March 1958, Crown Motors, Inc., one of the Employers herein, acquired the capital stock of Brown and began operating a retail automobile business in the same building where Brown had been located. In April 1958 the Unions requested that Crown recognize them as the collective-bargaining representative of its shop employees; recognition was refused.

a representative of the Unions stated that they did not claim to represent a majority of the employees of any of the Employers.

The Unions' denial that they now claim to represent the employees would be sufficient to remove the questions concerning representation necessary to support the Employers' petitions, provided that such disclaimer is clear and unequivocal and that the Unions are not engaged in conduct inconsistent with such disclaimer.¹¹ Admittedly, the Unions began picketing in order to obtain recognition. Therefore, the issue at hand is whether the purpose of the picketing was, as they allege, changed to organization of the employees after the issuance of the Board's decision in the earlier case. However, it appears that both before and after the issuance of that decision, the main theme of the signs carried by the pickets remained essentially the same in most instances—that employees were on strike. In April and May 1958, some 8 or 9 months after the issuance of the prior decision in August 1957, the Unions at the meetings noted above continued to demand recognition. The resolution of the Galesburg Trades and Labor Assembly adopted in April 1958 and the handbill distributed at the premises of Galesburg automobile dealers and generally throughout the city at about the same time indicate that the Unions were picketing in protest against the Employers' failure to recognize and bargain collectively with them. Accordingly, we find that the disclaimer was ineffective with respect to all the Employers who were being picketed at the time of the hearing. The only Employer not being picketed at that time was McCreery. As there had been no picketing at its premises for a period of 10 to 12 months prior to the hearing, we find that the disclaimer was effective as to it, and we will therefore dismiss the petition in Case No. 13-RM-413. Accordingly, we find that questions affecting commerce exist concerning the representation of employees of all the Employers except McCreery within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act.¹²

4. The petitions herein sought single-employer units. The Unions submitted to the Board the question whether an Associationwide unit, including employees of all the members of Galesburg Automobile Dealers Association, was appropriate. It is well established that presumptively single-employer units are appropriate, and to defeat a claim for such units in favor of a broader unit a controlling history of collective bargaining on the broader basis must exist. Therefore, as there is no history of collective bargaining on a multiemployer basis, we find that the single-employer units urged by the Employers are appropriate.¹³ We shall therefore con-

¹¹ *New Pacific Lumber Co.*, 119 NLRB 1307.

¹² *New Pacific Lumber Co.*, *supra*.

¹³ *Arden Farms, etc.*, 117 NLRB 318.

sider the contention of the parties, if any, with respect to these separate units.

Weaver Motors, Case No. 13-RM-411

This Employer contends that a single unit, including shop employees at both its plants, is appropriate. The Unions contend that only a separate unit of such employees at each plant is appropriate. However, the Employer indicated its willingness to abide by the Board's action, if it found such separate units appropriate.

The Employer operates a new car showroom and service garage on South Seminary Street in Galesburg and a truck and service garage and used car lot on Grand Avenue in the same city. The plants are about 1½ miles apart. At its South Seminary Street plant, the Employer sells new Plymouths and DeSotos and does most of its repair work on passenger cars. At its truck and service garage and used car lot, the Employer sells new International Harvester Trucks and used trucks and passenger cars, and does most of its truck repair work. At the new-car showroom and service garage, the Employer has approximately 15 employees, including 3 sales, 3 office clericals, and some 8 or 9 shop employees. The latter include four mechanics, two wash and cleanup men, a partsman, a bodyman, and a greaseman and mechanic's helper. At the truck and service garage, the Employer has approximately nine employees, including one salesman and about eight shop employees. The latter include five mechanics, a partsman, and two helpers. All employees work under the overall supervision of the two partners constituting the firm. One of the partners spends the greater part of his time at the South Seminary Street location; the other spends the greater part of his time at the Grand Avenue location. Shop employees at each location work under separate immediate supervision. All employees are paid from a single bank account, have similar benefits, and work about the same hours. Those in the same or similar work classifications are paid at substantially the same wage rates at both plants. The salesmen sell indiscriminately at both. Almost every day shop employees are temporarily transferred from one plant to another; occasionally, if, for example, one plant has a special tool lacking at the other, repair jobs are transferred. In these circumstances, including the proximity of the two plants, the frequent transfers between them, the similar benefits and wage rates, and the fact that there is no history of collective bargaining, we find that a single unit, including employees at both locations, is appropriate.¹⁴

At the hearing, the parties agreed as to the categories to be included in the unit. In accordance with the agreement, and on the record in this case, we find that the following employees of the

¹⁴ *The B. F. Goodrich Company*, 112 NLRB 757.

Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act: All shop employees at the Employer's new-car showroom and service garage and at its truck and service garage and used car lot at Galesburg, Illinois, including partsmen, mechanics, bodymen, wash and cleanup men, and greasemen and helpers, but excluding office clerical employees, professional employees, salesmen, guards, foremen, and supervisors as defined in the Act.

Galesburg Lincoln-Mercury Co., Case No. 13-RM-412

In substantial accord with the agreement of the parties, we find that the following employees of this Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act: All shop employees, including mechanics, parts helpers, and polish men at the Employer's garage at Galesburg, Illinois, but excluding office clerical employees, professional employees, salesmen, guards, the service manager, and supervisors as defined in the Act.

Crown Motors Inc., Case No. 13-RM-414

We find, in substantial accord with the agreement of the parties, that the following employees of this Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act: All shop employees at the Employer's garage at Galesburg, Illinois, including mechanics, lubrication employees, bodymen, painters, wash and polish employees, and the parts helper, but excluding office clerical employees, professional employees, salesmen, guards, the service manager, the parts manager, and supervisors as defined in the Act.

Inman-Swanson Motors, Inc., Case No. 13-RM-415

The parties in effect agree that a unit of shop employees at this Employer's Galesburg garage is appropriate, but disagree as to the unit placement of the parts helper. The Employer would include him. The Unions would exclude him, on the ground, in substance, that the Employer's parts manager is a supervisor¹⁵ and that the Employer is training the parts helper to be his successor.

Normally, the Employer employs both a parts manager and parts helper. However, at the time of the hearing the parts manager had been on an indefinite leave of absence for about 7 months, because he was busy building a house. He had left the Employer's employ with the understanding that he "might" return and the Employer anticipated that he would do so in 3 or 4 months. During his absence, the helper had assumed a substantial part of his nonsupervisory duties. Primarily, the parts helper supplies parts to mechanics and keeps an inventory. All shop employees, including

¹⁵ We find, in substantial agreement with the parties, that the parts manager is a supervisor within the meaning of the Act, and we will exclude him.

the parts helper, work about the same hours and are hourly paid. All work under the immediate supervision of the service manager. The wages of the parts helper are about the same as those of some of the mechanics and 20 to 30 percent lower than the wages of certain other mechanics. The parts helper has no independent authority to buy merchandise on behalf of the Employer or to hire or discharge employees or even to recommend such action. At the hearing, the Employer's president referred to him as an "apprentice learning the business" and testified in effect that he did not know whether the helper would succeed to all the duties of the parts manager, including his supervisory duties, when he had acquired full knowledge of the job. As the record shows that the parts helper presently has none of the statutory powers of a supervisor, we find that he is not now a supervisor. Moreover, under the circumstances of this case, we find that the possibility of his elevation to supervisor in the future does not warrant his exclusion from the unit. We therefore include him.¹⁶

Upon the entire record in this case, we find that the following employees of the Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act: All shop employees at the Employer's garage at Galesburg, Illinois, including mechanics, wash and polish employees, and the parts helper, but excluding office clerical employees, professional employees, salesmen, guards, the service manager, the parts manager, and supervisors as defined in the Act.

Puckett Buick Co., Case No. 13-RM-416

The parties in effect agree on the appropriateness of a unit of shop employees at this Employer's Galesburg garage, but disagree as to the parts manager. The Employer would include him, while the Unions would exclude him on the ground that he is a supervisor or managerial employee. The parts manager orders parts from the factory, distributes them to the mechanics, sells them to customers, both retail and wholesale, who come to the Employer's garage for that purpose, and keeps an inventory. All shop employees, including the parts manager, work under the immediate supervision of the service manager. The parts manager receives a salary plus a commission on the accessories that he sells. His earnings are approximately one-half those of the service manager and considerably less than those of the mechanics. Except during inventory periods, he is the Employer's only parts employee and even then the additional parts employees work under the supervision of the service manager. It does not appear that the parts manager has any of the powers of a supervisor as set forth in Section 2(11) of the Act. Accordingly,

¹⁶ *International General Electric, S.A., Inc.*, 117 NLRB 1571, 1581.

we find that he is not a supervisor. However, as he has the power to pledge the Employer's credit in ordering parts, we find that he is a managerial employee, and will exclude him.¹⁷

Upon the entire record in this case, we find that the following employees of the Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act: All shop employees at the Employer's garage at Galesburg, Illinois, including mechanics, car polishers, the lubrication man, and the car washer, but excluding office clerical employees, professional employees, salesmen, the part-time janitor, guards, the parts manager, the service manager, and all other supervisors as defined in the Act.

[The Board dismissed the petition in Case No. 13-RM-413.]

[Text of Direction of Elections omitted from publication.]

¹⁷ *Sunnyland Packing Co., etc.*, 113 NLRB 162, 165.

Jimmy Ray Rush, An Agent of Local Union 5367 of the United Steelworkers of America, AFL-CIO; Sam Dixon, Jr., An Agent of Local Union 5367 of the United Steelworkers of America, AFL-CIO; Windol Atchison, An Agent of Local Union 5367 of the United Steelworkers of America, AFL-CIO; James Mitchell, An Agent of Local Union 5367 of the United Steelworkers of America, AFL-CIO; Local Union 5367 of the United Steelworkers of America, AFL-CIO and Mark Louis Taliaferro, Attorney [Cosper Manufacturing Company, Inc.] Local Union 5367 of the United Steelworkers of America, AFL-CIO and C. V. Stelzenmuller, Attorney. Cases Nos. 10-CB-577, 10-CB-578, 10-CB-579, 10-CB-580, 10-CB-581, and 10-CB-611. March 16, 1959

DECISION AND ORDER

On February 20, 1958, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report.¹ Subsequently, the Respondents filed a motion to reopen the record.² The

¹ After the issuance of the first Intermediate Report, the Respondents also requested oral argument. This request is hereby denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

² The Respondents excepted to the denial by the Trial Examiner of requests to compel the General Counsel to produce certain written statements of witnesses who testified. By order of September 10, 1958, the Board sustained the exception and ordered the