4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Evidence is insufficient to sustain allegations of the complaint as to the termination of employment of Carl Laymon, Gene Guldenpfennig, and Willard Cooley.

[Recommendations omitted from publication.]

Graham Transportation Company, Petitioner *and* Brotherhood of Marine Engineers, AFL–CIO.[1] *Case No. 4–RM–322. September 17, 1959*

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 Alan R. Kaye, 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. BME asserts that it is not a labor organization within the meaning of Section 2(5) of the Act because it exists primarily for the purpose of representing supervisors. It alleges that its membership consists principally of licensed supervisory marine engineers employed aboard oceangoing vessels, and that its constitution limits its membership to supervisory employees.[2] BME does not deny, however, that it is attempting to organize and to represent the Employer's engineers, both licensed and unlicensed. As we find, in paragraph 4 below, that none of the Employer's engineers are supervisory employees, it follows that BME is seeking to represent individuals who are "employees" within the meaning of Section 2(3) and who would be eligible for membership in BME either because they hold Coast Guard licenses or are designated as engineering officers. It is not a requirement of the Act that a "labor organization" be comprised exclusively of "employees." Supervisors may, in fact, join and participate in the activities of a labor organization without affecting its status, subject only to the qualifications of Section 14(a).[3] We find, therefore, that BME is a labor organization within the meaning of Section 2(5) because it is in fact an organization in which employees may par-

[1] Hereinafter called BME.

[2] Article IV, section 2, reads: "A candidate for membership shall be an American Citizen, holding a United States Merchant Marine Officer's license, issued by the United States Coast Guard A candidate for apprentice membership shall be an American Citizen employed as an engineering officer on diesel or steam-powered craft for which no Coast Guard license is required."

[3] Section 14(a) provides: "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purposes of any law, either national or local, relating to collective bargaining."

ticipate and which exists for the purpose of dealing with employers concerning grievances, wages, and other conditions of work.[4]

3. BME refused to stipulate that a question concerning representation exists. On April 21, 1959, BME informed the Employer that a majority of the latter's marine engineers had designated BME as their exclusive bargaining agent. The next day the Employer refused recognition and suggested to BME that it seek a Board-conducted representation election. During the following 2 days, BME and the Employer again exchanged correspondence, reiterating their respective positions. On April 24, 1959, the Employer filed the instant petition, and the following day BME commenced picketing the Employer's home office and the docks where its boats were tied up. BME also distributed organizational leaflets to the Employer's engineers and explanatory leaflets to employees of other companies. At the date of the hearing, the picketing was still in progress and the Employer had still refused to recognize BME. From the foregoing it is clear, and we so find, that a question exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer contends that a unit of its 15 licensed and unlicensed marine engineers is appropriate. It asserts that the only supervisor on any of its vessels or tugs is the captain, a deck officer, that none of the engineers are supervisors as they have none of the indicia of authority set forth in Section 2(11) of the Act, and moreover, have no employees to supervise. BME urges that the proposed unit is inappropriate as it is composed predominantly of supervisory personnel.

The Employer is a Delaware corporation engaged in the transportation of petroleum products in and through the inland waterways of Delaware, Pennsylvania, New Jersey, and Maryland. It owns four barges, three motor vessels, and three tugboats.[5] Due to the relatively small size [6] of the tugs and motor vessels, the 15 engineers in the proposed unit comprise the Employer's entire engineroom personnel, with the exception of 1 wiper assigned to the *Sylvia*. Although three engineers are assigned to each ship, there are only two aboard at any time, as the Employer's off-shore employees are on a 20-day-on and 10-day-off schedule. The two engineers alternate 6-hour watches when on duty, but the wiper works only during the day.

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[4] *N.L.R.B.* v. *Edward G. Budd Manufacturing Company*, 169 F. 2d 571 (C.A. 6); *National Maritime Union (Standard Oil Company)*, 121 NLRB 208; *Ravenna Arsenal, Inc.*, 98 NLRB 1; *American Broadcasting Company, Inc.*, 93 NLRB 1410; *Di Giorgio Wine Company*, 87 NLRB 720, 721.

[5] There are no engineers employed aboard the barges. At the time of the hearing, only the tug *Arnold* was in operation. The tugs *Cramp* and *Spartan* were tied up because of lack of business.

[6] See Appendix A.

BME contends that the three engineers assigned to the *Sylvia* are supervisors as they all have the authority to recommend discipline and direct the work of the one wiper. In the absence of evidence that these engineers possess authority to direct other than routine work, or that their disciplinary recommendations, if any, are effective, we find that the three engineers assigned to the *Sylvia* are not supervisors within the meaning of Section 2(11) of the Act.[7]

BME's second contention is that the chief and relief chief engineers are supervisors because they are at all times in overall charge of the engineroom and equipment. We find this contention without merit, even if it were proved. Responsibility for the maintenance of physical property does not, of itself, establish the existence of supervisory authority. As it is clear that the chiefs and relief chiefs have no employees to supervise, we find that they are not supervisors and shall, therefore, include them in the unit.[8]

We also find no merit in BME's final contention that some of the engineers involved herein are supervisors because they are licensed by the United States Coast Guard. In determining the supervisory status of marine engineers, whether or not they are licensed, we have always utilized the same tests which are applicable in other industries. Thus, where it has been clearly established that marine engineers have the authority expressed in Section 2(11), we have found them to be supervisors,[9] but where they possessed no such authority, we have found them to be nonsupervisors.[10] To be sure, the Board has customarily treated licensed marine engineers as supervisors, but in those cases, it was clear from the size of the ship and crew that there were other engineroom personnel for the engineers to supervise. The fact that a marine engineer possesses a Coast Guard license does not alone support a finding of supervisory status.[11]

We therefore find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All licensed and unlicensed marine engineers employed aboard the Employer's tugs and vessels, including the standby engineers,[12] but excluding all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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[7] *American Radiator & Standard Sanitary Corporation,* 119 NLRB 1715, 1718.

[8] *General Foods Corporation,* 110 NLRB 1088.

[9] *The Cleveland Cliffs Iron Company,* 117 NLRB 668; *General Foods Corporation, supra; Hutchinson & Co., et al.,* 101 NLRB 90; *Globe Steamship Company, et al.,* 85 NLRB 475; *Charles Zubick,* 74 NLRB 356.

[10] *Standard Oil Company,* 121 NLRB 208; *General Foods Corporation, supra; Wilson Transit Company,* 75 NLRB 181; *Central Barge Company,* 61 NLRB 784.

[11] *Central Barge Company,* 64 NLRB 1059, footnote 9.

[12] These engineers had formerly been assigned to the tug *Cramp,* but since its deactivation, they have been engaged primarily in the maintenance of the several engines. As the Employer substitutes these standby engineers for the regular off-shore engineers when one of the latter category is ill or cannot make a trip, and as no valid reason is given for their exclusion, we find they have a sufficient community of interest to warrant their inclusion.

APPENDIX A*

Ship	Horsepower	Length	Draft	Complement
MV Buffaloe	450	188'5"	11'	one captain. one mate. one cook. two deckhands. three engineers. eight total.
MV Herron	500	188'5"	11'	same as MV *Buffaloe.*
MV Sylvia	900	208'8"	12'6"	Do.
Tug Arnold	200	80'2"	9'	Do.
Tug Cramp	200	69'	7'	one captain. one cook. two deckhands. two engineers. six total.
Tug Spartan		65'	7'	same as tug *Cramp.*

*This data was supplied by the Employer after the hearing.

Mission Valley Inn, Inc.[1] *and* The Local Joint Executive Board of San Diego, Comprising Waiters and Bartenders Local 500 and Cooks and Waitresses Local 402, Affiliated With Hotel and Restaurant Employees and Bartenders International Union, Petitioner. *Case No. 21–RC–5653. September 17, 1959*

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 Fred W. Davis, 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 operates a motel, restaurant, and bar in San Diego, California. It offers 112 rooms for rental to travelers. Approximately 90 percent of its guests reside in the State of California. In addition to the 112 rooms of its Mission Valley Inn, the Employer rents out 48 rooms in the Mission Valley Lodge, which is adjacent to the Inn. The Mission Valley Lodge is a separate corporation. It has no employees of its own, and all services furnished to guests are performed by employees of the Employer. The Employer received total gross revenues of $925,000 during the fiscal year ending September 30, 1958. Of this amount $308,000 was received from the rental of rooms,[2] $392,000 was received from the sale of food, and $225,000 was

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

[2] The Employer's president testified that he did not know whether this figure included revenue received from the rental of rooms in the Mission Valley Lodge.