

that the store managers in stores which employ luggers and/or salesmen are supervisors, and shall exclude them from the unit.<sup>4</sup> We shall include the store managers in the stores in which there are no other employees.

The record indicates that the luggers regularly perform tasks related to the sale of the Employer's merchandise as well as actual selling to customers on a part-time basis. We find that they are regular part-time employees and include them.<sup>5</sup>

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act, including store managers in stores with no other employees, but excluding all other store managers, office clerical employees, the supervising managers,<sup>6</sup> and all other supervisors as defined in the Act:

All employees at stores operated by Jack B. Tizer in the Delaware Valley area under the corporate names of Royal Tile Company of Central South Philadelphia; Royal Tile Company of North Philadelphia; Royal Tile Company of Suburban Philadelphia; Royal Tile Company of Southern New Jersey, Royal Tile Company of Central New Jersey, which includes the following New Jersey stores: Collingswood, Atlantic City, Vineland, Brooklawn, Trenton, and Pennsauken; the following Pennsylvania stores: Willow Grove; Levittown; Girard Avenue, Philadelphia; Cottman Street, Philadelphia; North Fifth Street, Philadelphia; 13th Street and Snyder Avenue, Philadelphia; Kensington Avenue, Philadelphia; and Germantown Avenue, Philadelphia.

[Text of Direction of Election omitted from publication.]

<sup>4</sup> See *Fanny Farmer Candy Shops, Inc.*, 112 NLRB 299, 301.

<sup>5</sup> *Dependable Parts, Inc.*, 112 NLRB 581, 584.

<sup>6</sup> The parties agree, and we so find, that the four area supervisors, who are also managers of the stores with more than one employee, are properly excluded from the unit.

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**Modern Hard Chrome Service Company and Louis G. Baresciano, Petitioner and Metal Polishers Union Local 90, Metal Polishers, Buffers, Platers & Helpers International Union, AFL-CIO.**  
*Case No. 4-RD-216. October 16, 1959*

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Joseph A. Weston, a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record, the Board finds:

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

2. The labor organization named below claims to represent certain employees of the Employer.

3. Petitioner asserts that the Union, which is being currently recognized by the Employer as the bargaining representative of the employees in the appropriate unit, is no longer a representative as defined in Section 9(a) of the Act.

The Union has moved to dismiss the petition upon the ground that the Petitioner is a supervisor within the meaning of the Act and therefore is not qualified to file the present petition.

The first question is whether, in the light of the *Union Manufacturing* case,<sup>1</sup> the alleged supervisory status of the Petitioner may be considered an issue in this proceeding. Section 9(c)(1)(A) of the Act provides that a petition for certification or decertification may be filed by an "employee or group of employees or any individual or labor organization acting in their behalf . . ." By statutory definition the term "employee" excludes supervisors.<sup>2</sup> Nor can the term "any individual . . . acting in their [employees'] behalf . . ." be construed to include supervisors. One purpose of the Act was to draw a clear line of demarcation between supervisory representatives of management and employees because of the possibility of conflicts in allegiance if supervisors were permitted to participate in union activities with employees. To permit supervisors to act as employee representatives would therefore defeat the purposes of the Act.<sup>3</sup> Moreover, Section 9(c)(1) itself carefully distinguishes between employer and employee petitions. When Congress intended that an employer should have the right to file a representation petition it said so in specific terms. Thus Section 9(c)(1)(B) which deals exclusively with an employer's right to file a representation petition mentions only one circumstance justifying the filing of an employer petition: the presentation of "a claim to be recognized as the representative defined in section 9(a)." We conclude therefore that under the statute a petition for decertification filed by a supervisor is invalid and must be dismissed.<sup>4</sup>

We do not construe *Union Manufacturing* as requiring a different result. In that case, the Union sought to examine the individual petitioner who had filed the decertification petition "for the purpose of seeing if there is a basis for moving to dismiss the Petition on the

<sup>1</sup> *Union Manufacturing Company*, 123 NLRB 1633.

<sup>2</sup> Section 2(3) of the Act states: "The term 'employee' . . . shall not include . . . any individual employed as a supervisor. . . ."

<sup>3</sup> *Clyde J. Merris*, 77 NLRB 1375.

<sup>4</sup> *Clyde J. Merris*, *supra*; *Laris Motor Sales, Inc.*, 104 NLRB 1106; *Doak Aircraft Co., Inc.*, 107 NLRB 924; *Bethlehem Steel Company*, 111 NLRB 185; *Humko, A Division of National Dairy Products Corporation*, 123 NLRB 310.

ground of collusion with the Employer.” The Board sustained the ruling of the hearing officer refusing to permit such questioning. In doing so, it declared that henceforward it would be Board policy “to exclude from decertification cases any evidence of employer participation in the institution of the proceeding, whether the alleged evidence pertains to showing of interest or to employer responsibility for the filing of the petition.” In adopting this rule, the Board was influenced by the “relative advantages and disadvantages” of allowing issues of “employer instigation of, or assistance in, the filing of the decertification petition to be litigated in the representation proceeding.” However, as we have pointed out above a supervisor cannot under the statute file a decertification petition; employee status is an indispensable jurisdictional prerequisite to the validity of such a petition. Moreover, the factors which generally weigh against permitting litigation of unfair labor practice matters in representation proceedings are not present when the issue is the supervisory status of the petitioner in a decertification proceeding. This is the kind of issue which is repeatedly presented in representation proceedings. The Petitioner’s alleged status as a supervisor must in any event be decided in this proceeding because, if the Petitioner is not a supervisor, he is included in the unit and is entitled to vote in the election. Deferring consideration of the Petitioner’s status to an unfair labor practice proceeding would therefore serve no useful purpose. It could result only in costly delay of the representation proceeding. Accordingly, we construe *Union Manufacturing* as not applying when the issue is whether the petitioner in a decertification proceeding is a supervisor.

As to the Petitioner’s status, the evidence shows that he is one of approximately 10 journeymen platers engaged in hard chrome plating of industrial tools, dies, machine parts, and other metal products. He both assists and is assisted by other journeymen, apprentices, and helpers. He has no power to hire, discharge, or effectively recommend such action. We find that the Petitioner is not a supervisor and therefore deny the Union’s motion to dismiss the petition.

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 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, maintenance, receiving, shipping, and delivery employees of the Employer at its plant in Camden, New Jersey, excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

CHAIRMAN LEEDOM and MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.