the union activities or membership of the helpers. There is no showing in this record of any union animus by the Respondent On the contrary there is affirmative evidence that its relations with the Union are harmonious. I am satisfied that even if the Union had not organized the helpers and petitioned for the election which resulted in the Board's finding that they were the Respondent's employees the Respondent would have taken the December 2 measures if in some other way, as for example by opinion of its attorney, it had believed the helpers could legally be deemed its employees because of the conditions which obtained before the December 2 changes Accordingly, I find that the Respondent did not violate Section 8(a)(3) and (1) of the Act as alleged in Case No. 15–CA–1234.

Nor do I find a violation of Section 8(a)(5) of the Act as alleged in Case No. 15–CA–1527. Here it must be noted that the claim of violation is the Respondent's refusal on and after March 10, 1959, to bargain with the Union for helpers. If, as the Respondent contends, it employed no helpers on these dates, its denial of refusal to bargain must be sustained, for the statutory mandate compels an employer to bargain only with the representative of *his* employees. The Board's Decision and Direction of Election and its Supplemental Decision and Direction of Election in Case No. 15–RC–1611 referred ultimately only to the status of the nine helpers whose ballots were challenged in the December 13, 1957, representation election. These decisions did not constitute specific findings that any helpers other than those nine whose ballots were deemed valid were employees. Bearing in mind that the Board had crucially distinguished these nine helpers from those who were directly hired and paid by drivers and of whom the Respondent had no knowledge, it follows that helpers who had been then or were afterward hired by drivers on this basis were not employees of the Respondent. The foregoing nine helpers who were found by the Board to be employees had left the Respondent's employ for nondiscriminatory reasons before March 10, 1959. The hire of all other helpers after December 2, 1957, was governed by the Respondent's notice to its drivers of that date. Because by its deliberate lawful action of December 2, 1957, the Respondent ceased acquiring knowledge pertaining to the identity of any helpers subsequently hired by drivers, at least in the sense implied by the Board. I find that on and after March 10, 1959, the Respondent did not employ any helpers for whom the Union sought bargaining I consequently find that by notifying the Union it would be a waste of time to negotiate for persons it did not employ and by continuing to adhere to this position the Respondent did not violate Section 8(a)(5) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

Conclusions of Law

1. National Dairy Products Corporation, Sealtest Southern Dairies Division, New Orleans, Louisiana, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. General Truckdrivers, Chauffeurs, Warehousemen & Helpers, Local No. 270, Ind., is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, have not been sustained.

[Recommendations omitted from publication.]

Appliance Supply Company *and* Local Union 2261, Gulf Coast District Council, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, Petitioner. *Case No. 12–RC–772. April 21, 1960*

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 Roy M. Speer, Jr., hearing

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

Upon the entire record in this case the Board finds:

1. The parties stipulated to the following commerce facts: The Employer is a private corporation engaged in the retail sales, distribution, and repair of Frigidaire products and in the fabrication and wholesale distribution of aluminum knocked-down windows. Both businesses, though otherwise separate except for common administrative services, are conducted from the same premises at Fort Myers, Florida. During the preceding fiscal year, the Employer's gross revenue from the retail sales, distribution, and service of Frigidaire products amounted to approximately $263,000, and the gross revenue from the fabrication and wholesale distribution of its windows amounted to approximately $343,000. In the same fiscal year, the Employer received directly from points out of State, supplies, materials, and other products for its window operations valued at approximately $27,000, and purchased from local suppliers Frigidaire products, originating outside the State, in excess of $50,000. In addition, during the same period, the value of products shipped by the Employer and services performed by it outside the State of Florida amounted to approximately $7,500.

The Employer opposes the assertion of jurisdiction by the Board because it claims its retail appliance and window businesses are separate and unrelated, and neither in and of itself has sufficient commerce to meet any of the Board's current standards for assertion of jurisdiction. It is true that the operations of the Employer, if considered separately, do not meet any of the Board's present jurisdictional standards. However, it has been the Board's established policy, continued when the Board in October 1958 adopted its new jurisdictional standards, to apply the concept that it is the impact on commerce of the totality of an employer's operations that should determine whether or not the Board will assert jurisdiction.[1] It is also the Board's established policy that in cases where an employer, constituting as in this case a single corporate entity, operates both a retail and a nonretail enterprise, and the nonretail aspect of the employer's operations is clearly not *de minimis*, the Board will ordinarily apply nonretail standards in determining whether to assert jurisdiction where neither enterprise alone has sufficient commerce on which to assert jurisdiction.[2]

Present jurisdictional standards applicable to nonretail enterprises provide for the assertion of jurisdiction if such enterprise has direct or indirect inflow, or a combination of both amounting to $50,000

[1] *Potato Growers Cooperative Company*, 115 NLRB 1281; *The T. H. Rogers Lumber Company, Inc*, 117 NLRB 1732; *Siemons Mailing Service*, 122 NLRB 81, 84.

[2] *The T H Rogers Lumber Company, Inc., supra* Cf. *Potato Growers Cooperative Company, supra*, and *Emil Denemark, Inc*, 120 NLRB 1059.

annually.[3] Looking, therefore, to the totality of the Employer's operations and applying the pertinent nonretail standard, the Employer's sum total of the direct inflow of the window business and the indirect inflow of the retail business exceeds $50,000 annually. Accordingly, we find that the Employer is engaged in interstate commerce,[4] and that it will effectuate the policies of the Act to assert jurisdiction herein. The Employer's motion to dismiss the petition on jurisdictional grounds is therefore denied.

2. The labor organization involved claims to represent certain employees of the Employer.[5]

3. A question affecting commerce 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 Petitioner seeks a unit of production and maintenance employees at the Employer's Fort Myers, Florida, plant. The Employer's only contention with respect to the appropriateness of the unit is that such a unit is inappropriate. It is, however, well established that production and maintenance units as such are presumptively appropriate,[6] and that in the absence of evidence to show otherwise the Board will find a unit of production and maintenance employees appropriate excluding therefrom those employees customarily excluded. An issue appears to be presented as to the supervisory status of Donald Juull. Juull is classified as "Local assembly man." The record shows that he is in charge of his department, supervises the work of three or four employees, and has the authority effectively to recommend the hire or discharge of the employees under his supervision. In view of the foregoing, we find that Donald Juull is a supervisor within the meaning of the Act. Accordingly, we exclude him from the unit. We find, therefore, 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 plant, including truckdrivers and helpers, but excluding all office clerical employees, managerial and sales personnel, professional and technical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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

[3] *Siemons Mailing Service, supra,* at 85

[4] See *Southwest Hotels, Inc*, 126 NLRB 1151.

[5] As the Petitioner is an organization admitting employees to membership and is formed for the purposes of bargaining with employers concerning wages, hours, and conditions of employment, we find that it is a labor organization within the meaning of the Act.

[6] *Beaumont Forging Company,* 110 NLRB 2200