

works in the machine shop with the other production and maintenance employees, under the same supervisor as other machine shop employees, and is paid an hourly rate as are the rest of the production and maintenance employees. As he appears to share interests in common with the other employees in the plant, we shall include him in the production and maintenance unit.

Since December 1959, the Employer had laid off 51 production and maintenance employees because of a decline in volume of sales and production. Employer's vice president and factory manager testified, without contradiction, that no recall of laid-off employees could be foreseen by him at the present time and that a pickup in business could not be predicted. Although there have been layoffs in past years, the Employer's figures show a continuing decline in sales and units produced during the past 4 years. Although the employer recalled a number of employees in January 1960 for work on a new product, they were again laid off when the new product was not successful. A total of 51 employees are laid off at the present time without reasonable expectation of reemployment in the foreseeable future. Consequently, these employees are not eligible to vote in the representation election directed herein.⁵

In view of the foregoing, we find that the following employees at the Employer's plant in Chicago, Illinois, constitute a unit appropriate for collective-bargaining purposes:

All production and maintenance employees including the mold finisher, and station wagon drivers, but excluding the artist, model-maker, truckdrivers, journeymen and apprentice spinners, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

unless these employees are either technical or professional. As the record contains insufficient evidence upon which to make such a determination, he would permit these employees to vote under challenge.

⁵ *Thermoid Company*, 123 NLRB 57, 58.

G. C. Murphy Company, Petitioner and Retail Clerks International Association AFL-CIO, Local Union No. 278. *Case No. 9-RM-234. August 24, 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 William C. Brafford, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹ The Employer contended at the hearing that the Regional Director's cancellation of a duly scheduled consent election was an abuse of discretion, and moved that the Board 128 NLRB No. 90.

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 Bean and Fanning].

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 organization involved claims to represent certain employees of the Employer.

3. The Union contends that its contract with the Employer constitutes a bar to an election. The parties had a contract effective for 2 years from February 13, 1959, which, however, was terminated by notice from the Union on February 13, 1960, and the negotiation of new contract provisions. The parties executed an extension agreement on February 3, 1960, which provided that: "the parties hereto agree that the present Labor Agreement entered into the 13th day of February, 1959, between the parties hereto and expiring pursuant to the notice by the Union, on February 13, 1960 . . . shall be extended . . . for a period of thirty (30) days. . . ." As the extension agreement was effective only for 30 days, it has also expired. We find, therefore, that there is no contract bar,² and accordingly, 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 parties agree to the appropriateness of a storewide unit, but disagree with regard to the unit placement of the following:

The Union would exclude all five office clericals, whereas the Employer would include all but the cashier, who, it contends, is a confidential employee because she has access to confidential file material. This circumstance, however, does not make the cashier a confidential employee within the Board's definition as she does not determine, formulate, or effectuate management policy in the field of labor relations nor assist anyone who does.³ Her principal duties are to compile sales reports and perform other office clerical duties. As it is established Board practice to group in one unit selling and nonselling employees of a retail department store, including office clerical employees, we shall include the cashier and the other four office clericals in the unit.⁴

The Employer would exclude 15 or 20 extra employees who work only on call. The Union took no position on this matter. In view of

order that said election be held in accordance with the stipulation of the parties. The hearing officer referred this motion to the Board. As determinations by the Regional Director regarding the conduct of consent elections are final (Rules and Regulations, Series 8, Sec. 102.62(a)), this motion is hereby denied, and an election is directed below on the basis of the record in this proceeding.

² A contract which has been terminated by the mutual assent of the parties thereto cannot serve as a bar. See *Deluxe Metal Furniture Company*, 121 NLRB 995, 1003.

³ *The B. F. Goodrich Company*, 115 NLRB 722

⁴ *J. J. Moreau & Son, Inc.*, 107 NLRB 999, 1001.

the intermittent nature of their working hours, we find that they are casual employees, and we shall therefore exclude them.⁵

The parties agreed to the exclusion of one schoolboy who works 12 to 14 hours a week cleaning the restaurant. He shares in none of the employees' fringe benefits, and there is no evidence that he has any reasonable expectancy of permanent employment. Upon the entire record, we find that he is a temporary or casual employee, with interests different from those of the employees in the unit. Therefore, and in accord with the agreement of the parties, we shall exclude him.⁶

The Union would include the night watchman, while the Employer would exclude him as a guard. As the record shows that his duties include, among others, protection of the Employer's property from entry by unauthorized persons, we shall exclude him as a guard within the meaning of the Act.⁷

The Union would include three assistant managers, and the restaurant manager, while the Employer would exclude them all as supervisors. The assistant managers are in charge respectively of the basement, main floor, and stockroom. They and the restaurant manager have the authority to hire, discharge, and discipline employees. Accordingly, we find that they are supervisors within the meaning of the Act, and shall exclude them.

Accordingly, we find that the following employees at the Employer's Montgomery, West Virginia, Store No. 42, constitute a unit appropriate for the purposes of collective bargaining:

All selling and nonselling employees, including regular part-time employees, the cashier, and office clerical employees, but excluding extra employees on call, casual employees, night watchmen, assistant managers, the restaurant manager, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ *Central Mutual Telephone Company, Inc.*, 116 NLRB 1663, 1667.

⁶ *Central Mutual Telephone Company, Inc.*, *supra*.

⁷ *Dixie Wax Paper Company*, 117 NLRB 548, 551; *Laundry Owners Association of Greater Cincinnati*, 123 NLRB 543, 546.

Pilgrim Furniture Company, Inc. and United Furniture Workers of America AFL-CIO, Petitioner. *Case No. 3-RC-2345 (formerly 2-RC-10493).* August 24, 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 Robert E. Harding, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.