

in the record that he responsibly directs the work of employees, or has any other indicia of supervisory authority, we find he is not a supervisor and accordingly include him.

Joseph Alder and Gilbert Levine are both laboratory assistants to the plant chemist. The Petitioner contends they are either supervisors, managerial employees, or professional or technical employees. The record will clearly not support a finding that Levine and Alder are either supervisors or managerial employees as there is no evidence that they regularly ¹¹ responsibly direct the work of employees, or that either of them has an effective voice in management, or is in a position to formulate and determine corporate policy. However, both of them perform tests on the Employer's products, which tests the Employer characterizes as routine, as well as test and makeup formulas. In addition they are required to check on the Employer's product through every stage of the operation. The record does not indicate specifically what these tests are or what training is required to do the work. Both are college graduates and Alder attended medical school. Alder who is an expert on color is paid \$170 and Levine \$120 per week. We shall permit them to vote subject to challenge inasmuch as the record is insufficient to establish that they are either professional or technical employees.

Accordingly we find that the following employees 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 of the Employer at its Baltimore, Maryland, plant, including plant clerical employees, laboratory helpers, expediter Carper, and warehouseman Stouton, but excluding all office clerical and technical employees, professional employees, seniors, solecutter Anderson, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

¹¹ There was testimony that Levine "sometimes" directs employees in solecutting in connection with samples for the sales department.

Maybe Stone Company, Petitioner and International Union of Operating Engineers, AFL-CIO, Local 324 and Truck Drivers' Union Local No. 164, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 7-RM-316. October 28, 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 Jon P. Desenberg, hearing: 129 NLRB No. 56.

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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

Upon the entire record in this case, the Board finds:

1. International Union of Operating Engineers, AFL-CIO, Local 324, herein called Operating Engineers, and Truck Drivers Union Local No. 164, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters, assert that the Employer is not engaged in commerce within the meaning of the Act. The Employer operates plants in Maybee and Tecumseh, Michigan, the latter being involved herein. During the fiscal year of June 1959 to June 1960, the Employer made combined sales at its plants valued in excess of \$50,000 to customers within the State of Michigan who in turn made sales valued in excess of \$50,000 to points directly outside the State. In view of the foregoing, we find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction over it.¹

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

3. The question concerning representation:

The Employer operates a stone quarry at Maybee, Michigan, and a sand and gravel pit at Tecumseh, Michigan. In this proceeding, the Employer seeks to resolve the representative claims of the Teamsters and Operating Engineers covering the employees at Tecumseh. The Teamsters and Operating Engineers assert as a bar separate contracts which they executed with a predecessor of the Employer covering these employees.

On January 2, 1959, the Operating Engineers entered into a contract with the Employer covering all production and maintenance employees at the Maybee quarry. While the Employer apparently was engaged in no other business operations of this nature at the time, the contract recited that it was to be "effective as to all plants and quarries of the Employer located in the State of Michigan." On March 1, 1960, the Employer acquired the sand and gravel pit at Tecumseh where the production and maintenance classifications of boatmen, inside plant drivers, operator and driver, and crane operators here involved were employed.² This pit had been owned by the Kuhlman Company which

¹ See *Siemons Mailing Service*, 122 NLRB 81; *S. Frederick Sansone Co.*, 127 NLRB 1301.

² While the Employer believed at the time that the Maybee contract with the Operating Engineers extended to the Tecumseh employees, the Operating Engineers apparently does not contend that the contract did so extend or that it is a bar. Assuming that the parties did extend this agreement to Tecumseh, such agreement would nevertheless not constitute a bar to an election among the employees at a newly acquired operation. See *Miratile Manufacturing Company, Inc.*, 124 NLRB 48.

in turn had purchased the pit in the fall of 1959 from Tecumseh Materials, Inc.

On April 1, 1959, the Teamsters and the Operating Engineers entered into separate contracts with Tecumseh Materials, Inc., to run until March 31, 1962, which contracts are now asserted as a bar. The Teamsters' agreement covered the boatmen, inside plant drivers, and the operator and driver at the pit operation. The Operating Engineers' contract encompassed the crane operators. The Teamsters contend that their contract with Tecumseh Materials, Inc., is binding upon the Employer because it contains a successorship clause which makes the agreement binding "upon the parties hereto, their successors, administrators, executors and assigns," and because the Employer had agreed to assume the agreement. We find no merit in this contention. The Board has frequently stated that a contract does not bar an election where a purchaser in good faith takes over a business operation without binding himself to assume the bargaining agreement of the prior owner of the establishment.³ The record discloses that the Employer did not agree to assume this contract when it acquired the Tecumseh pit in March 1960. Moreover, on May 19, 1960, the Teamsters requested the Employer to *negotiate* a contract covering the employees at Tecumseh which it sought to represent. It was only after the Teamsters struck the Employer in July 1960 for a 3-week period to force the contract's assumption that the Employer promised to abide by its terms, but only until the Employer could obtain a resolution of the representation claims presented by the Unions. On these facts, we are unable to find that the Employer assumed or agreed to assume the Tecumseh contract within the contemplation of the Board's decisions. Accordingly, we find that the Teamsters' contract with Tecumseh Materials, Inc., is not a bar.

The Operating Engineers also contends that the Employer agreed to assume the contract between the Operating Engineers and Tecumseh Materials, Inc., covering the crane operators. As the recorded evidence fails to establish that the Employer ever agreed to assume this contract, we find no merit in this contention and find that this contract is not a bar.

4. The appropriate unit:

The Employer asserts that the appropriate unit should consist of all production and maintenance employees at the Tecumseh pit, including boatmen, inside plant drivers, operator and driver, and crane operators. The Unions oppose an overall unit on the ground that, pursuant to a jurisdictional agreement, the Teamsters represents boatmen, inside plant drivers, and operator and driver and the Operating Engineers represents crane operators at sand and gravel pits such as here involved. Accordingly, the Unions request separate units of these em-

³ See *General Extrusion Company, Inc.*, 121 NLRB 1165, 1168.

ployees. However, the Teamsters indicated a willingness to proceed to an election in an overall unit if the Board should find such a unit appropriate. The Board has held that a union's jurisdictional or other limitation concerning classifications of employees in no way restricts the Board in its determination of the appropriateness of a bargaining unit.⁴ As the record discloses that all employees at Tecumseh are under the same supervision, are subject to the same working conditions, and interchange, we find that an overall unit at the Tecumseh pit is appropriate.

Accordingly, we find that the following employees of the Employer constitute an appropriate unit 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 sand and gravel pit at Tecumseh, Michigan, including boatmen, inside plant drivers, operator and driver, and crane operators; excluding office and clerical employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁴See *Central Coat, Apron & Linen Service, Inc., et al.*, 126 NLRB 958.

Gross Telecasting, Inc. and National Association of Broadcasting Employees & Technicians, AFL-CIO. *Case No. 7-CA-2358. October 31, 1960*

DECISION AND ORDER

On May 9, 1960, Trial Examiner Henry S. Sahn issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He found further that the Respondent had not engaged in a certain unfair labor practice alleged in the complaint and recommended dismissal of such allegation. Thereafter, the Respondent and General Counsel filed exceptions to the Intermediate Report and briefs in support thereof.

The Board had reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified herein.

The General Counsel excepts, *inter alia*, to the Trial Examiner's finding that the Respondent had not discriminatorily discharged