

is the foundation for our actions here, we are concerned with the original liability, if any, which would be decided, and then an order in usual terms which would read from the date of discrimination until the date on the part of the Employer, until the man is actually re-instated, and in the part of the union, until it by valid notice notifies the employer it has no objection to his re-employment. . . .

So, I am going to tell you frankly, now, that that question as to the effectiveness of Respondent's Exhibit 2 stopping liability, I am going to place outside the limitations of this complaint and answer, and leave that to be disposed of at a different time after we have decided the original question here as to whether discrimination in fact occurred as regards the parties named in the complaint. . . . (Tr. 236-237).

And again at page 238:

. . . and stating that the resolution of the question presented by the two documents is reserved for compliance, . . .

On page 239 Trial Examiner Doyle said:

. . . if there comes a time when these documents are proposed as effectively stopping the back-pay liability of the union, then someone else will have to take the evidence on the whole situation, . . . and you will have a hearing on that.

I interpret the ruling by Trial Examiner Doyle as removing from his consideration the question of whether the letter and the telephone call made by Deem to the Respondent Union could serve to toll the backpay liability of the Respondent Union. In its Decision and Order the Board affirmed the Trial Examiner's rulings. I consider that in this fashion the Board too refused to consider the possible tolling of backpay liability of the Respondent Union in connection with the August 20 letter or the telephone calls.

The Board's order in this case required the Respondent Union, in addition to making Deem whole for loss of pay, to notify the Respondent Employer that it had withdrawn its objection to Deem's employment as a plumber and to request the Respondent Employer to offer Deem immediate and full reinstatement to his former position. The letter, of course, says that the Respondent Union has no objection to the employment of Deem, but does not affirmatively request the Respondent Employer to offer reinstatement to him. Why Deem was not offered reinstatement until November 21 is not explained. If it be true that the Respondent Union covertly opposed such action on the part of the Respondent Employer, there is nothing in this record to substantiate a finding to that effect. There is no evidence that the good faith of the Respondent Union was tested to learn if the letter was written for any purpose other than to notify the Respondent Employer and Deem that the Respondent Union had no objection to Deem's employment. I find that a causal connection is not established from any act or failure to act by the Respondent Union to Deem's loss of earnings subsequent to August 23. In consequence I find that the backpay liability for the Respondent Union ended on August 23, 1957.

[Recommendations omitted from publication.]

Arlan's Department Store of Michigan, Inc.¹ and Helen DeQuin, Petitioner² and Evelyn Helaers, Petitioner³ and Central States Joint Board, Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL-CIO. Cases Nos. 7-RD-311 and 7-RD-314. May 16, 1961

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Stanley S. Sadur, hearing

¹ The Employer's name appears as amended at the hearing.

² Herein called Petitioner DeQuin or DeQuin.

³ Herein called Petitioner Helaers or Helaers.

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 these cases to a three-member panel [Members Rodgers, Leedom, and Fanning].

Upon the entire record in these cases, the Board finds:

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

2. The labor organizations involved claim to represent certain employees of the Employer.⁴

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

The Union is currently recognized as bargaining agent for a unit of employees at both of the Employer's department stores at 24000 West Eight Mile Road and 1539 East Grand Boulevard in Detroit, Michigan, pursuant to a contract executed on January 20, 1958, and due to expire on January 20, 1962. On August 25, 1959, Petitioner DeQuin filed a petition in Case No. 7-RD-311 to decertify the Union at the Eight Mile Road store and, on August 27, 1959, Petitioner Helaers filed a similar petition in Case No. 7-RD-314 for the Grand Boulevard store which thereafter was amended to request, in the alternative, decertification of the Union at both stores. The Union contends that the petitions should be dismissed on the grounds, *inter alia*, that (1) the contract constitutes a bar, and (2) the showing of interest is inadequate to warrant an election.⁵

As to the Union's first contention, the Board has held that contracts in excess of 2 years, such as the one herein, will be treated as contracts for fixed terms of 2 years, and that petitions filed from 150 to 60 days before the end of that 2-year period will be deemed timely.⁶ As the petitions were filed within the 150- to 60-day period, we find that they were timely and that the contract is no bar.

With respect to the second contention, the Regional Director believed that the individual showing of interest of each of the Peti-

⁴The Petitioners assert that the Union, currently recognized as the bargaining representative for the employees designated in the petitions, is no longer the bargaining representative as defined in Section 9(a) of the Act.

The Retail Clerks International Association, AFL-CIO, also participated in the hearing as an Intervenor on April 14 and 27, 1960, but on May 10, 1960, it disclaimed any interest in this matter and withdrew from the hearing.

On October 13, 1960, the Salesmen's Guild of America moved to intervene for the purpose of appearing on the ballot. The hearing closed on August 10, 1960. The authorization cards which accompanied the motion were dated in September and October 1960. As these authorization cards postdate the hearing, we find that the Salesmen's Guild has failed to show a representative interest in the employees involved as of the time of the hearing. Accordingly, its motion to intervene is hereby denied. See *Gary Steel Products Corporation*, 127 NLRB 1170.

⁵The Union's additional motions for dismissal of the petitions, having been duly considered by the Board, are hereby dismissed as lacking in merit.

⁶See *DeLuxe Metal Furniture Company*, 121 NLRB 995.

tioners, standing alone, was insufficient to warrant an election in the contractual, two-store unit. He therefore treated the petitions as joint for showing purposes. On October 20, 1959, Petitioner DeQuin requested withdrawal of her petition. The Regional Director denied this request on the grounds that DeQuin was no longer an employee of the Employer and because DeQuin did not have the approval of the employees who supported her petition to request withdrawal. The Union contends that the Regional Director erred in refusing to permit DeQuin to withdraw and that, had withdrawal been granted, the showing of interest of Petitioner Helaers in Case No. 7-RD-314 would have been inadequate to support an election in the two-store unit.

The record discloses that the Regional Director erred in his belief that the showing of interest on each petition, standing alone, was inadequate to support an election in the two-store unit, for we are administratively satisfied that Helaers' showing in Case No. 7-RD-314 is sufficient to support an election in the overall unit. In view of the foregoing, and as Helaers' amended petition alternatively requests an election in such unit, we find that the Regional Director's failure to permit withdrawal of DeQuin's petition was not prejudicial and we reject the Union's contention that the petitions in these cases be dismissed on this ground.

4. The appropriate unit:

The bargaining unit, as set forth in the current contract and supplemental agreement between the Employer and the Intervenor, is described therein as follows:

All regular full-time employees, all regular extra employees, all contingent extra employees, and employees of all leased departments employed by the Employer in the Metropolitan Detroit, Michigan, area, excluding all store managers, head cashiers, assistant head cashiers, department managers, assistant department managers, professional employees, guards, and supervisors as defined in the Act.

The parties are in general agreement as to the scope of the appropriate unit.⁷ They also agree that office managers have been excluded from the contractual unit on grounds that they are supervisors within the meaning of the Act. However, the Intervenor contends that the

⁷ After the close of the hearing, and by letter dated March 30, 1961, the Union asserted that the Employer had opened a third store in the Metropolitan Detroit area and contended that the appropriate unit for any election to be directed herein should include the employees at this third location. As decertification elections are held in units co-extensive with the contract units, and as this third store was not in existence at the time the contract herein was executed, we find no merit in this contention and shall limit the election to employees at the West Eight Mile Road and East Grand Boulevard stores. See *Minneapolis Star and Tribune Company*, 115 NLRB 1300, 1302.

The parties stipulated that head cashiers and assistant head cashiers should be included in the unit. However, as these individuals have been excluded from the contract unit, and as it does not appear that their duties have changed since the execution of the contract, we shall exclude them.

following categories of employees should be within the appropriate unit, while the Employer and the Petitioner assert they should not: (a) assistant office managers, (b) persons in charge of soft line and hard line receiving and marking, (c) all employees of appliances, furniture, and floor covering departments, and (d) department managers and assistant department managers.

A. *Assistant office managers*: The Employer would exclude the assistant officer managers on the ground that they are confidential employees, although they have been included in the bargaining unit. As the record shows that they do not assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, we find no merit in the Employer's contention in this respect and we shall include the assistant office managers in the unit.⁸

B. *Persons in charge of soft line and hard line receiving and marking*: The record shows that all persons in charge of soft line and hard line receiving and marking possess the authority to hire, fire, and discipline. We shall accordingly exclude them from the unit as supervisors within the meaning of the Act.⁹

C. *Employees of appliances, furniture, and floor covering departments*: These departments, which like many other departments in the store are leased by the Employer, are composed of employees who spend the majority of their time inside the store selling appliances, furniture, and floor covering. Their duties are similar to those of the other selling employees, including those in the other leased departments. In view of these facts, and since these employees are included within the current contract unit as "employees of all leased department," we shall include them.

D. *Department managers and assistant department managers*: The record shows that department managers and assistant department managers possess the statutory indicia of supervisory authority, and are excluded from the recognized bargaining unit on that basis. We shall, accordingly, exclude them.

Accordingly, we find that the following employees at the Employer's store at 24000 West Eight Mile Road and 1539 East Grand Boulevard in Detroit, Michigan, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time employees, all regular extra employees, all contingent extra employees, and all employees of all leased departments, including all employees of appliances, furniture, and floor covering departments, and assistant office managers, but excluding all store managers, assistant store managers, department managers,

⁸ See *New England Processing Unit*, 124 NLRB 899.

⁹ See *Robertson Sign Company*, 129 NLRB 207, footnote 3.

assistant department managers, office managers, head cashiers and assistant head cashiers, persons in charge of soft line and hard line receiving and marking, professional employees, guards, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Abbott Laboratories and Pembroke Gochnauer, Esq., Petitioner and Warehouse Union Local 860, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ind.). *Case No. 20-RD-250. May 16, 1961*

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 M. C. Dempster, hearing officer.¹ 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 [Chairman McCulloch and Members Rodgers 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 employees of the Employer.

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.²

The Petitioner seeks to decertify a unit of warehouse employees of the Employer at its San Francisco, California, plant. It is the position of the Employer that the single-employer unit described in the petition is the only appropriate unit for the purpose of a decertification election. The Union contends that a unit so limited is inappro-

¹ The Petitioner asserts that Warehouse Union Local 860, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ind.), the currently recognized bargaining representative of the employees involved herein, is no longer their representative as defined in Section 9(a) of the Act.

² The Union moved to dismiss the petition on the ground that the identity of the "petitioning party" was not disclosed. The petition herein, which was filed by an attorney, was administratively investigated by the Regional Director before proceeding to hearing. The Union makes no allegation of fronting by the Petitioner, nor does it question the validity of the showing of interest. Section 9(c) (1) (A) permits the filing of a decertification petition, *inter alia*, by "any individual," which includes an attorney. See *Alexander Manufacturing Company*, 120 NLRB 1056. It is not necessary that the petition be filed by any sponsoring employee or committee of employees. It is sufficient that the Petitioner is acting on behalf of a substantial number of employees whose interest in decertification has been administratively demonstrated. The motion to dismiss is denied.