

of the unrepresented employees as a fringe defect in the existing unit. It is rather late, we think, to take issue with the well-established Board principle that, in any given situation, several units may be deemed appropriate, albeit one might be more appropriate than another.¹⁸ Moreover, we see no valid basis for allowing the fortuity of the Petitioner's request for the more comprehensive unit to have controlling weight. Our colleagues would, we assume, have little difficulty with directing a self-determination election among these employees, if the Petitioner had sought only to add these employees to their existing unit.

Accordingly, we would direct a separate election among the previously unrepresented employees.

¹⁸ We do not agree that the *Zia* rule is in derogation of the Board's responsibility to determine the appropriate unit. From its earliest days the Board has made use of the self-determination election, see, e.g., *Globe Machine and Stamping Company*, 3 NLRB 294; *Armour & Company*, 40 NLRB 1333, and the courts have approved the validity of its use, see *N.L.R.B. v Underwood Machinery Company*, 179 F. 2d 118 (C.A. 1); *N.L.R.B. v Weyerhaeuser Company*, 276 F. 2d 865 (C.A. 7), accord, *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146, 156, as an aid in determining appropriate units.

A. F. Publicover and Company¹ and Independent Union of Plant Protection Employees, Petitioner. *Case No. 1-RC-6391. November 21, 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 John Madden, hearing officer. Thereafter, on July 21, 1961, the Board having remanded the proceeding for additional evidence, the reopened hearing was held on August 9, 14, 16, and 28, 1961, before Alvin M. Glazerman, hearing 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 [Chairman McCulloch and Members Leedom and Brown].

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 Petitioner seeks to represent the guard employees of the Employer, which is engaged in furnishing companies with guard and protective services. The Employer contends that the Petitioner admits to membership employees other than guards, and is therefore

¹ The name of the Employer appears as corrected at the hearing.

precluded by Section 9(b)(3) of the Act from certification as the representative of a unit of guards. The Employer's contention is based on the representation by the Petitioner of a unit which includes fire inspectors at the General Electric Company plant in Pittsfield, Massachusetts. The Petitioner maintains that these inspectors are guards within the meaning of the Act, while the Employer contends that they are not.

The plant protection unit of the Pittsfield plant, for which the Petitioner was certified as the bargaining representative in 1950 (Case No. 1-RC-1903, not published in NLRB volumes), is composed of 25 guards and 9 fire inspectors, all of whom are uniformed, report to the same location, and are under the general supervision of the chief of plant protection. The fire inspectors, like the guards, work on three shifts. A lieutenant of guards and a lieutenant of fire inspectors, who supervise their respective groups on the first shift, interchange with each other when one is absent. On the second and third shifts, both groups are supervised by the lieutenant of guards. The primary duties of the fire inspectors are to inspect and maintain fire equipment and to carry out other fire prevention and firefighting duties. Occasionally, however, fire inspectors, all of whom have been promoted from jobs as guards, have substituted for and assisted guards in the performance of guard duties. In addition, each year the fire inspectors are sworn in as special police officers by the city of Pittsfield. They are thereby authorized to take action in the event of violations of the Employer's plant protection rules and misconduct by employees. The fire inspectors report serious violations in writing to the lieutenant of fire inspectors or to the chief of plant protection, and would be subject to reprimand in the event of failure to do so, whereas, the chief of plant protection testified, rank-and-file employees would not be expected to report such matters. From the foregoing and the entire record, it is clear that an essential part of the duties and responsibilities of these fire inspectors is the enforcement of plant protection rules. We find, therefore, that these fire inspectors are guards within the meaning of Section 9(b)(3) of the Act.²

Accordingly, we find, as the Petitioner contends, that it is a labor organization whose membership is limited to guards as required by Section 9(b)(3) of the Act. The Employer's motion to dismiss the petition on the ground that the Petitioner admits to membership employees other than guards is, therefore, hereby denied. We likewise deny the Employer's motion to dismiss, raised in its brief, on the ground that the Petitioner is precluded by its constitution from repre-

² *Boeing Airplane Company, Seattle Division*, 116 NLRB 1265

senting employees in the industry in which the Employer is engaged. It is the Petitioner's willingness, rather than its constitutional ability, to represent these employees which is the controlling factor.³

3. 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. In accord with the agreement of the parties, we find that 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 personnel employed by the Employer at its Boston, Massachusetts, operation, who perform police, guard, and protection duties, excluding all nonguard personnel and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

³ *Mayfair Industries, Incorporated*, 126 NLRB 223.

Perfect T.V., Inc. and International Brotherhood of Electrical Workers, Local Union 44, AFL-CIO, Petitioner. Case No. 19-RC-2727. November 21, 1961

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.

Upon the entire record, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.¹
2. The labor organization named below claims to represent certain employees of the Employer.

¹ The Employer is engaged in Montana in the maintenance of a community TV antenna system by which it transmits TV signals by cable to its customers. Its annual revenue is about \$70,000. Paul McAdams is its president and principal owner. McAdams is also president and principal owner of Yellowstone Amusement Company and Livingston Community Antenna Association, herein called Yellowstone and Livingston, respectively, and is an owner and officer of Big Timber TV Cable, Inc. and Western Micro-Wave, Inc., herein called Big Timber and Western Micro-Wave, respectively. Like the Employer, these companies operate in Montana. Livingston, with an annual revenue of about \$80,000, and Big Timber, whose annual revenue is about \$20,000, also provide TV cable service. Yellowstone operates a radio station and has an annual revenue of about \$60,000. Western Micro-Wave has microwave facilities which pick up the TV signals of major networks originating in Salt Lake City, Utah, and relay them to the community antennas, a service for which it is paid. The record indicates that McAdams administers the various enterprises owned by him as a single integrated operation. In support of its unit position that the appropriate unit in this case should include such cable service repairmen as are employed by the Employer, Yellowstone, Livingston, and Big Timber, the Employer