

No response to the notice to show cause was thereafter filed with the Board. Accordingly, and for the reasons stated in the notice, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

Security Guard Service, Inc., Petitioner and Gus Rallis. *Case No. 28-UC-1. July 27, 1965*

**ORDER DENYING PETITION FOR CLARIFICATION
AND AMENDMENT OF CERTIFIED UNIT**

On September 17, 1964, the Regional Director for Region 28 certified Gus Rallis as exclusive bargaining representative for a unit of all guards employed by the Employer at the NASA site at Organ, New Mexico, excluding office clerical employees and supervisors as defined in the National Labor Relations Act, as amended.¹ Thereafter, on January 15, 1965, the Employer filed a petition for unit clarification and amendment of certification in which it requests the National Labor Relations Board to exclude shift supervisors or sergeants from the previously certified bargaining unit on the ground that events since the aforementioned certification show them to be supervisors as defined in the Act.

A hearing was held upon the instant petition before Hearing Officer L. L. Porterfield on February 8, 1965. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The Employer filed a brief which has been duly considered.

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 Fanning, Brown, and Jenkins].

The supervisory status of the Employer's shift supervisors or sergeants was one of the principal issues litigated in the representation proceeding in Case No. 28-RC-1211. In that proceeding, the Employer took the position that sergeants should be excluded from the unit as supervisors, whereas the Petitioner contended they should be included as rank-and-file employees. In the Decision and Direction of Election in that case, issued August 19, 1964, the Regional Director determined that sergeants were not supervisors within the meaning of

¹ Case No. 28-RC-1211.

154 NLRB No. 5.

the Act and they accordingly were included in the unit. The Employer did not request review of the Decision and the Petitioner was certified as exclusive representative of the employees in the unit described above.

On September 2, 1965, the Regional Director issued a complaint alleging a violation of Section 8(a) (3) arising out of the discharge of one of the Employer's sergeants.² The Employer defended on the ground that the sergeant admittedly discharged for union activity, was a supervisor rather than an employee under the Act. The hearing before the Trial Examiner was conducted on December 10 and 11, 1964, and the petition herein was filed on January 15, 1965. At the hearing in this proceeding, the Employer introduced in evidence the transcript of testimony in the unfair labor practice proceeding for the purpose of showing the duties and responsibilities of shift supervisors. It thus appears that both cases present the issue of the supervisory status of guard sergeants.

On March 10, 1965, Trial Examiner William E. Spencer issued his Decision in Case No. 28-CA-1091 in which he found that shift supervisors or sergeants, such as the Charging Party involved therein, were not supervisors as defined in the Act. As of this date, we are adopting the carefully considered conclusions of Trial Examiner Spencer in that case which are set forth in detail in his Decision.³ And upon consideration of the entire record in this case, we have reached the conclusion, consistent with that arrived at in the unfair labor practice proceeding, that shift supervisors or sergeants are not supervisors as defined in the Act and should not be excluded from the certified unit. We shall accordingly deny the Petition for Clarification and Amendment of Certification.

[The Board denied the petition for unit clarification.]

² Case No. 28-CA-1091.

³ *Security Guard Service, Inc.*, 154 NLRB 8.

**RCA Communications, Inc. and Operating Engineers Local Union
No. 3 International Union of Operating Engineers, AFL-CIO,
Petitioner.** *Case No. 20-RC-6313. July 27, 1965*

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 Hearing Officer William F. Roche. The Hearing Officer's rulings made at the hearing are free
154 NLRB No. 2.