

Panda Terminals, Inc.¹ a wholly owned subsidiary of Pacific Intermountain Express Co.,² Employer-Petitioner *and* Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America³ *and* Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, AFL-CIO.⁴ *Cases 13-UC-9 and 13-RM-822. November 18, 1966*

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9(b) and (c) of the National Labor Relations Act, as amended, which petitions were subsequently consolidated for hearing, a hearing was held before Hearing Officer Allen P. Haas. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.⁵ Briefs have been filed by the Employer, by Local 710, and by BRC in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

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 organizations involved claim to represent certain employees of the Employer.

¹ Hereinafter also called Panda or the Employer.

² Hereinafter called PIE. The name appears as amended at the hearing.

³ Hereinafter called Local 710.

⁴ Hereinafter called BRC.

⁵ BRC's motion to reject Employer's Exhibit 4 (Panda's current collective-bargaining agreement with Local 710, executed on August 24, 1964, covering Panda's dockworkers) was referred to the Board for ruling. BRC contends that the document was not properly authenticated, as the authenticating witness, Paul James, assistant vice president of labor relations for PIE and its subsidiaries, was shown to have given prior inconsistent sworn testimony. Thus, in a previous Board representation hearing on August 26, 1964, involving another wholly owned PIE subsidiary, James had testified, *inter alia*, that "*Panda Terminals of Illinois, Inc.*, is a party to a labor agreement with Local 710 covering the dock workers . . ." *Judson Sheldon International*, Case 13-RC-10261. (Emphasis supplied.) However, Panda's dock contract with Local 710 was not in issue in the *Judson* case, and James explained that, while his reference to "*Panda Terminals of Illinois, Inc.*," rather than "*Panda Terminals, Inc.*," technically was incorrect, he was ". . . talking about the same company . . ." More importantly, however, we take judicial notice of the Regional Director's Decision and Order in the *Judson* case, issued on September 25, 1964 (not published in printed volumes of Board decisions), of which no review was sought, where, on the basis of the entire record, he found, *inter alia*, that Local 710 represents the dockworkers employed by "Panda Terminals, Inc." Being satisfied that James' testimony in the instant case is consistent with that finding, we hereby deny BRC's motion to reject Employer's Exhibit 4.

3. These cases involve a dispute concerning the representation of Panda's dock and terminal employees who, as a result of the consolidation hereafter detailed, perform all freight handling operations for Pacific and Atlantic Shippers, Inc.⁶ and National Carloading Corporation.⁷ Prior to the consolidation of the Chicago freight forwarding functions of P & A and National, only National's freight was handled at the 47th Street terminal⁸ (by employees of the Santa Fe Railway⁹), while P & A's dock operations were performed at its terminal facilities, located at 357 Halsted Street, Chicago, Illinois¹⁰ (by employees of Panda). Upon consolidation, which became effective on August 1, 1965, P & A's freight handling operations were transferred from Halsted Street to the 47th Street dock, as a result of which Panda transferred its employees to the combined terminal. In addition, Panda took over National's freight handling functions at that location and some of the former Santa Fe employees, who had been doing National's dockwork there. Panda's dock employees for many years have been represented by Local 710, while the former Santa Fe employees traditionally have been represented by BRC, and the dispute herein stems from the conflicting claims of these two unions.

In Case 13-UC-9, Panda seeks clarification by the Board of the existing dock unit by a determination of whether the former employees of Santa Fe are included in the bargaining unit of its dockworkers represented by Local 710. Alternatively, in Case 13-RM-822, Panda requests the Board to define the appropriate unit and designate the appropriate agent for collective bargaining.

For the reasons set forth below, we find that the petition for clarification of bargaining unit raises a question concerning representation which may not be resolved through a clarification of existing units. Accordingly, as there is thus a question affecting commerce concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1)(B) and 2(6) and (7) of the Act, the petition in Case 13-UC-9 will be dismissed.¹¹

In order to focus the issues in proper perspective, a summary of the background and extensive bargaining histories of the parties is helpful. Thus, it should be noted at the outset that Panda, P & A, and National are all subsidiaries of PIE. The parent company is a motor freight carrier, certified by the Interstate Commerce Commission to

⁶ Herein called P & A.

⁷ Herein called National.

⁸ The consolidated terminal facilities, located at 3750 West 47th Street, Chicago, Illinois, hereinafter are referred to as the 47th Street terminal.

⁹ Atchison, Topeka and Santa Fe Railway Company, herein called Santa Fe.

¹⁰ Herein called the Halsted Street dock.

¹¹ See *International Paper Company, Long-Bell Division, Gardiner Branch*, 143 NLRB 1192, 1195.

operate upon regular routes between Chicago on the east and Los Angeles, San Francisco, and Seattle on the west. Besides operating a fleet of motor vehicles and maintaining terminals throughout its system, PIE has acquired the total assets of several freight forwarding companies.¹² P & A and National were purchased by PIE in 1957 and 1962, respectively. In 1957 PIE also purchased the assets of Panda, a local cartage company, engaged in performing the freight handling functions (loading and unloading of freight) in Chicago for various freight forwarding concerns. In addition, Panda performed local pickup and delivery services in the Chicago area.¹³

At the time of P & A's acquisition by PIE, the freight handling functions of P & A's freight forwarding operations in Chicago were performed by employees of various railway companies, including the Pennsylvania Railroad, pursuant to tariff agreements with those companies. Shortly thereafter, however, P & A decided to perform its own dockwork with its own employees at the Halsted Street terminal. To that end, P & A canceled its tariff arrangements and hired, as new employees, certain of the former Pennsylvania Railroad dockworkers. Following their employment by P & A, these employees became members of Local 710, which thereafter was recognized by P & A as the exclusive bargaining representative of its dock employees. At about the same time, Local 710 was also recognized as the bargaining agent, in a separate unit, of P & A's office clerical staff employed at the Halsted Street facility. Subsequently, in late 1959 or early 1960, P & A's freight handling operation, together with its dock employees, and its contract with Local 710 covering these workers, was taken over by Panda. Since that time Panda has recognized and bargained with Local 710 as the representative of its dockworkers. These employees are covered by a current collective-bargaining agreement between Local 710 and Panda, which is effective until March 31, 1967.

In 1962, PIE purchased National which, like P & A, is a freight forwarding company with terminal facilities in several cities, including Chicago. At the time of its acquisition by PIE, and for many years prior thereto, National also had its freight handling function performed by railway employees pursuant to tariff arrangements with certain railroad companies. Thus, National had ceased doing its own dockwork in 1944, when it transferred that function to the Chicago &

¹² Freight forwarding companies, such as P & A and National, operate pursuant to Interstate Commerce Commission licenses and are engaged in soliciting freight from shippers; accumulating such freight in less than carload lots; consolidating these shipments into full carloads or trailerloads for shipment to other terminals of the forwarder close to the freight's point of destination; segregating the freight into the original lots; and, finally, distributing such freight to the respective consignees.

¹³ Panda's employees performing pickup and delivery work are not involved herein. These employees are represented in collective bargaining by Teamsters Local 705.

Northwestern Railroad (herein called C & NW) pursuant to an agreement whereby C & NW agreed to take over National's dockworkers and to apply to them the terms of National's collective-bargaining agreement with BRC. Subsequently, in 1957, National's dock operation was transferred from C & NW to the Santa Fe Railroad pursuant to an agreement among National, BRC, and Santa Fe, which provided in part, as follows:

The employees of the Chicago & Northwestern Railway Company who are presently engaged in the handling of National's operations at the Wells Street Freight Station of the Chicago & Northwestern Railway Company, and who hold seniority on what is known as the joint Chicago & Northwestern-National Seniority roster, will be transferred to the Santa Fe without loss of seniority.

This agreement (herein called the 1957 or Tripartite Agreement) also preserved certain "bumping" rights between National's clerical employees, represented by BRC, and the dockworkers thus transferred to the Santa Fe payroll. In addition, National specifically agreed that:

. . . in the event the work transferred from the C&NW to the Santa Fe is returned to National, the latter will take over the employees then employed by Santa Fe in the combined National Santa Fe seniority district without loss of seniority.

National's entire operations in Chicago thereupon were moved to Santa Fe's terminal facilities at 47th Street, where employees of Santa Fe performed all of National's dock functions until August 1, 1965. As indicated above, these dock employees have been represented by BRC in collective-bargaining agreements with Santa Fe. In addition, National's office clerical employees, working in an area adjacent to the 47th Street dock, have been represented by BRC in collective-bargaining agreements with National. The BRC-National labor contracts have specifically incorporated the terms of the Tripartite Agreement. In 1964 BRC was certified by the Board as the exclusive bargaining representative, in a nationwide unit, of dock and office clerical workers employed by National.¹⁴

Shortly, after acquiring National in 1962, PIE began to consolidate the end terminals of its wholly owned freight forwarding companies

¹⁴ *National Carloading Corporation*, Cases 20-RC-5616, 5617, 5618 (not published in NLRB volumes). In its Decision and Direction of Election issued on January 7, 1964, the Board described the appropriate unit as: "All office clerical employees, checkers, receiving and delivery clerks, warehouse employees, foremen and assistant foremen of the Employer at its locations covered by the present agreement between the Employer and the Brotherhood of Railway Clerks, . . ." with certain exclusions. The Board specifically rejected BRC's contention that the Santa Fe employees who perform dockwork exclusively for National at the 47th Street terminal should be included in the unit by virtue of their seniority right to employment with National in the event their jobs with Santa Fe are abolished. Finding these factors immaterial, the Board excluded the Santa Fe employees on the grounds that they are not employees of National.

in all locations where such forwarders were operating at separate facilities. Thus, by 1964 National and P & A had combined end terminal facilities in all locations except Chicago. As a result of these consolidations, however, the freight of National and P & A arrived at their respective Chicago terminals in co-mingled lots, requiring Santa Fe employees to handle some P & A freight, and Panda employees to handle some National freight. It was then decided, in the latter part of 1964, to combine the two freight handling operations in Chicago at a single terminal and, to that end, arrangements were made to lease the larger 47th Street dock from Santa Fe.¹⁵ In connection with this decision, it was also decided, and announced in mid-June 1965, that, upon consolidation, all dockwork for both companies would be performed by Panda, commencing on or about July 19, 1965; the tariff agreement between National and Santa Fe thereupon would be terminated; and Panda would honor its contract with Local 710, and hire as many of the former Santa Fe employees as were needed to staff the enlarged operation. In line with that decision, notices were sent to the Santa Fe employees inviting them to apply for employment at the consolidated dock operation. Pursuant thereto, some 314 written applications were received on July 28.¹⁶

It should be noted that, throughout their various meetings and correspondence with PIE which preceded the above decisions, neither Union objected to the actual consolidation of terminals or questioned the economic feasibility thereof. However, both Local 710 and BRC claimed to represent the employees engaged in the combined freight handling functions. BRC, therefore, rejected the proposed application at that facility of Local 710's contract and requested that the consolidation be postponed in order to permit it to file a civil suit under Section 301 of the Act. The effective date of consolidation, thereupon, was extended to August 1, 1965, and, on or about July 15, BRC initiated proceedings for enforcement of its Tripartite Agreement in the United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 65-C-1199.¹⁷ At the opening hearing in that case on July 30, the presiding judge, without objection, permitted the consolidation to take effect as scheduled, but directed that no action be taken with respect to the employment or seniority of former Santa Fe employees until the entire case had been heard by him. Thereafter, having heard the case, the United States District Court, on August 6, issued a temporary restraining order enjoining the employer from, *inter alia*, withdrawing or reducing

¹⁵ For the reasons hereinafter set forth, we find no significance in the fact that the lease was executed by National, rather than Panda, P & A, or PIE.

¹⁶ Unless otherwise specifically indicated, all dates refer to 1965.

¹⁷ Local 710 was permitted to intervene in that proceeding on the basis of its contract with Panda.

seniority rights of employees on the combined Santa Fe-National seniority roster; requiring such employees to work under the terms and conditions provided in Panda's collective-bargaining agreement with Local 710, except that the rates of pay to be applied to former Santa Fe employees shall be equal to those provided in Panda's contract with Local 710; and, hiring new employees until all employees listed on the Santa Fe-National seniority roster have been hired. Affirmatively, the court ordered, *inter alia*, that either Panda or National be selected as the employer of all the dockworkers at the consolidated terminal; the employer so selected must apply the terms of the BRC-National collective-bargaining agreement (except with respect to rates of pay) to employees named on the Santa Fe-National seniority roster; and the terms of the Local 710-Panda collective-bargaining must be applied to employees on the Panda seniority roster as of July 31, 1965.

The consolidated operation commenced at 12:01 a.m. on Monday, August 2, with a combined crew of Panda's employees (numbering about 45 to 50) and former Santa Fe employees (approximately 130 to 150 in number). Because of the court's preliminary injunction of July 30, however, the latter group did not become Panda employees, as had been contemplated, until the court's order of August 6, at which time their employment by Panda was effectuated and made retroactive to August 1.¹⁸ In line with the court's order, all dockworkers at the combined terminal have been paid according to the wage scales and job classifications provided in Panda's contract with Local 710. However, with respect to all other terms and conditions of employment, Panda has applied the contracts of BRC and Local 710, each to the particular employees represented by the respective Union.¹⁹

It is clear from the record, and the parties concede, that the work being performed at the combined terminal has remained identical to that previously handled at each of the separate facilities, except that all freight has been co-mingled and, therefore, the volume of freight has been vastly increased. Similarly, the former Santa Fe employees, working side by side with transferred Panda employees at the combined terminal, are under the same Panda supervisors, possess the

¹⁸ It appears from the record, which is not entirely clear on this point, that as a result of the District Court's preliminary injunction, the former Santa Fe employees had no specific employer between August 1 and 6, and were carried as employees of PIE, Panda, National, P & A, *et al.* However, since their status as Panda employees was subsequently effected retroactively, the specific identity of their interim employer is not material.

¹⁹ Neither Union contends that Panda has failed or refused to comply with the District Court's order.

same skills, have the same job classifications, and perform the same functions as the Panda employees. Thus, there has been a total integration of the two operations, and former Santa Fe employees cannot be distinguished from transferred Panda employees without looking to their union insignia.

Both BRC and Local 710 claim to represent all of the employees performing dockwork at the 47th Street terminal, each contending that, on the principles set forth in the *General Extrusion*²⁰ case, the expanded operation constitutes an accretion to its bargaining unit and, therefore, its current collective-bargaining agreement is a bar to this proceeding. Specifically, BRC contends that its current contract with National (effective until October 31, 1966), which incorporates the Tripartite Agreement, covers all the dockworkers herein, notwithstanding that they are on Panda's payroll. BRC argues that, by virtue of the Tripartite Agreement, the employees who performed National's dockwork at the 47th Street terminal before the consolidation were only technically the employees of Santa Fe since they retained certain rights to seniority, pension, insurance, reemployment, etc., with respect to National in the event that National resumed handling its own dockwork. In support of this contention, BRC argues that PIE and its wholly owned subsidiaries, including Panda, National, and P & A are, in fact, one and the same company and constitute the joint employer of all the employees herein involved.²¹ Therefore, BRC reasons, it is immaterial, so far as the rights of former Santa Fe employees are concerned, whether National or Panda or any other PIE subsidiary took over National's freight handling operation. For, in view of the asserted joint employer relationship, BRC contends that Panda is the legal successor to Santa Fe with respect to National's freight handling operation and, therefore, is bound by the Tripartite Agreement. On the other hand, Local 710 contends that its collective-bargaining agreement with Panda (effective until March 31, 1967),

²⁰ *General Extrusion Company, Inc., General Bronze Alwintite Products Corp.*, 121 NLRB 1165.

²¹ The Regional Director referred to the Board for ruling BRC's motion to amend the caption of this case by substituting, as the name of the Employer, the name: "Pacific Intermountain Express Co. and its wholly owned subsidiaries National Carloading Corporation, Pacific and Atlantic Shippers, Inc., Panda Terminals, Inc., Judson Sheldon International, and B.C. Forwarders, Ltd." BRC contends that PIE and each of these subsidiaries are joint employers, each acting as agent for the other, with respect to the employees here involved. We have found that Panda, although a wholly owned subsidiary, is an employer within the meaning of the Act. On the basis of the parties' stipulations on the record, we hereby also find that Panda meets the standards for asserting the Board's jurisdiction. Furthermore, the record establishes, and we find, that Panda is, in fact, the employer of the dockworkers herein and the caption of this case accurately reflects that fact. Accordingly, BRC's motion is denied. In addition, and for the reasons set forth, *infra*, BRC's contention is immaterial to this Decision and, therefore, we need not decide whether, in some other contest, a joint employer relationship might exist between PIE and its subsidiaries.

covers all of Panda's dockworkers in Chicago and, therefore, constitutes a bar to this proceeding, notwithstanding the transfer of Panda's operations to a new location and the subsequent increase in the size of the unit resulting from Panda's acquisition of a new customer, namely, National.²²

We find no merit in the Unions' contentions that the instant proceeding is barred by either of their collective-bargaining agreements. Contrary to BRC's basic contention, the fact that National, Panda, and P & A are wholly owned subsidiaries of PIE is not conclusive herein, in view of the extensive bargaining history in separate units, as outlined above, with respect to the employees here involved. Thus, Panda and P & A, although subsidiaries of PIE, have each bargained in an individual employer unit with Local 710. Similarly, in 1964 BRC was certified as the bargaining agent of National's employees, notwithstanding that National was then a subsidiary of PIE. BRC's certification was in an overall, nationwide unit of dock and clerical workers employed by National. The explicit exclusion from that unit of the Santa Fe employees who were engaged exclusively in handling National's freight, was not a mere technicality, as asserted by BRC. Rather, it was based on the Board's finding that Santa Fe, not National, was the employer of the dockworkers.²³ The record establishes that National has never employed dockworkers at the 47th Street terminal and its contract with BRC provides no classifications for such employees at that facility. Therefore, even if National, Panda, P & A, PIE, *et al.*, were considered the same employer, the former Santa Fe employees did not, as a result of their employment by Panda,²⁴ *ipso facto* come within the bargaining unit for which BRC was certified. For the bargaining history set forth above makes clear that in connection with its 47th Street operation, National has employed only office clerical workers and only these employees are covered by the contract which BRC asserts as a bar herein. Accordingly, BRC's current collective-bargaining agreement with National cannot operate as a bar to this proceeding.²⁵

Nor do we find merit in the contentions, advanced by Local 710, that the consolidation of the National-P & A freight terminal operations constituted a mere relocation of Panda's business with a sub-

²² Local 710 also contends that the Tripartite Agreement relied upon by BRC is an unlawful prehire contract to which no effect can be given. In view of our Decision herein, we find it unnecessary to pass upon the merits of that contention.

²³ See footnote 14, *supra*.

²⁴ Cf. *The Gas Service Company*, 140 NLRB 445, 447-448; and, *Humble Oil & Refining Company*, 153 NLRB 1361; 355 F.2d 356 (C.A. 2), reversing 247 F. Supp. 113.

²⁵ Cf. *San Francisco Metal Products Company, d/b/a O'Hara Metal Products Co.*, 155 NLRB 236; and *Humble Oil & Refining Company*, 155 NLRB 1084.

sequent expansion thereof, which resulted in an accretion to the bargaining unit represented by Local 710. Rather, in view of the facts outlined above, we find that the consolidation of the two terminal operations, which resulted in a four-fold expansion of Panda's work force, is comparable to an entirely new operation.²⁶ To hold, as Local 710 suggests, that 130 to 150 former Santa Fe employees represented by BRC must accept, as their bargaining agent, a union that was selected by approximately 45 to 50 Panda employees would be inconsistent with the basic principles of the Act.²⁷ Accordingly, the current collective-bargaining contract between Panda and Local 710 is not a bar to a present determination of bargaining representatives.²⁸

Finally, by separate motions made at the hearing and referred to the Board for ruling, BRC and Local 710 seek dismissal of the instant petitions on the ground that there are unresolved unfair labor practice charges against the Employer alleging, *inter alia*, violations of Section 8(a)(2) and (5) of the Act. (Cases 13-CA-7138, 13-CA-7116.) In support of their contentions, the Unions cited the Board's long-established practice of refusing to process representation petitions until such unfair labor practice charges have been resolved. While the Board does not normally conduct representation elections in the face of unresolved 8(a)(2) or (5) charges, it is discretionary with the Board to determine, on the facts in each case, whether an election at a given time and under prevailing circumstances will effectuate the policies of the Act.²⁹ The Board has departed from its general practice and directed elections in the face of such unresolved 8(a) charges where the alleged unfair labor practice conduct is related, at least in part, to the unresolved question of representation.³⁰ It is clear from the record herein that the unfair labor practice charges cited by the Unions raise issues which are directly related to, and dependent upon, resolution of the issues raised in the Employer's petitions herein.³¹ It is also clear that the charges are based on events which followed the consolidation and stemmed from Panda's attempt to operate the combined terminal within the proscriptions of the U.S.

²⁶ *New Jersey Natural Gas Company*, 101 NLRB 251, 252; see also *Purolator Products, Inc.*, 160 NLRB 80, and *The Kroger Company*, 155 NLRB 546.

²⁷ Cf. *Worcester Stamped Metal Company*, 146 NLRB 1683, 1685-86.

²⁸ *New Jersey Natural Gas Company*, *ibid.*, *Westinghouse Electric Corporation*, 144 NLRB 455, 458.

²⁹ Cf. *Holt Bros.*, 146 NLRB 383, 384; *Westinghouse Electric Corporation*, *supra*.

³⁰ See, e.g., *American Metal Products Company*, 139 NLRB 601, 604; *Swift & Co.*, 145 NLRB 756, footnote 11 at 761; *Marston Corporation*, 120 NLRB 76, 79; *Krist Gradis, et al.*, 121 NLRB 601, 615-616.

³¹ In addition to the 8(a) charges, which were filed by BRC, Local 710, and certain individuals, both Unions are charged with 8(b) violations (Cases 13-CB-1883, 13-CB-1889, and 13-CP-131)

District Court order.³² Further, as the parties were unable to resolve their differences, the Employer and the U.S. District Court now look to the Board for resolution of these issues. In these circumstances, we find that it will not effectuate the policies of the Act to refuse to process these cases, notwithstanding the existence of the aforementioned unfair labor practice charges. Accordingly, the Unions' motions to dismiss or defer the instant petitions are hereby denied.³³

4. BRC seeks an overall unit of all dock and clerical workers employed at the 47th Street terminal, coextensive with its certification, contending that ". . . the only appropriate unit here is the nationwide BRC-NCC [sic] unit." On the other hand, Local 710 and Panda contend that the only appropriate unit herein is the one described in their current collective-bargaining agreement, i.e., "Spotters, Dock Tractor Drivers, Callers, Checkers, Stackers, Truckers, Wheelers, Working Foremen and Office and Miscellaneous Truck Terminal Employees" employed by Panda at the 47th Street terminal.

Although Local 710's contract with Panda purports to cover "Office and Miscellaneous Truck Terminal Employees," the record is not clear with respect to the duties of those classifications. In any event, the record indicates that Panda had no office clerical workers.

As noted above, the clerical functions relating to National's freight forwarding operation in Chicago, since 1957, have been performed by employees of National working in an office of its freight handling function, P & A also moved its clerical staff from Halsted Street to the 47th Street offices. In addition, certain office clericals of B. C. Forwarding and Judson Sheldon International, who had worked at the Halsted Street facilities, were transferred to the 47th Street address. Thus, since August 1, 1965, all of the clerical employees of National, P & A, B. C., and Judson Sheldon, in connection with their Chicago operations, have worked in the same 47th Street office area. And, although on separate employer payrolls, these employees all use the same equipment, are under the same supervision, and, with the exception of Judson Sheldon International, perform all clerical duties in common as the work demands require. The office clerical work performed for National, P & A, and Panda, of necessity, is related to the adjacent dock operation. Nevertheless, the freight handling and the clerical functions, and the skills required for each, clearly are distinct and separate. They are performed under separate immediate supervision and, although an occasional dockworker is required to go into the offices or an office employee must appear on the

³² See footnote 19, *supra*.

³³ *Westinghouse Electric Corporation, supra*.

dock area, there is no interchange between the two operations. Furthermore, with respect to their operations in Chicago, the bargaining histories of National, P & A, and Panda clearly establish that the dockworkers and the clerical employees traditionally have been represented in separate bargaining units.

BRC's request for an overall unit of dockworkers and clerical employees, coextensive with its certification, would include not only the former Sante Fe dockworkers and the transferred Panda dockworkers, but also the office clerical workers employed by P & A and other PIE subsidiaries who are not party to this proceeding. In addition, as the scope of BRC's certification with respect to National is nationwide, its unit request herein would not be limited to this 47th Street operations, but could encompass operations of PIE and each of its freight forwarding subsidiaries wherever located. Clearly, such a unit is beyond the instant petitions.

Although the unit described in the current agreement between Local 710 and Panda purports to include "Office . . . employees," it does not, in fact, do so, as Panda does not employ office workers. We shall, therefore, exclude from the bargaining unit all such clerical employees.³⁴ Accordingly, in view of all the facts and circumstances heretofore recited, 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:³⁵

All spotters, dock tractor drivers, callers, checkers, truckers, wheelers, working foremen, and miscellaneous truck terminal employees, employed by Panda Terminals, Inc., at the 47th Street terminal, Chicago, Illinois, excluding office clerical employees, guards, confidential, supervisory, administrative, and professional employees within the meaning of the Act.

[Text of Direction of Election omitted from publication.]^{36 37}

³⁴ *General Electric Company (River Works)*, 107 NLRB 70, 72, and cases cited in footnote 9; cf., *Townley Metal and Hardware Company*, 151 NLRB 706, 708-709.

³⁵ After the close of the hearing, counsel for Local 710 filed with the Board a telegraphic motion to reopen the hearing for the purpose of receiving evidence concerning the representation of certain office clerical employees. The Employer and BRC opposed the motion. Local 710 counsel contends that he misstated the position of Local 710 when, during the hearing, he said that Local 710 was not asserting its contract covering P & A's clerical employees as a basis for claiming continuing representation of such clerical employees upon their transfer to the offices at 47th Street. As a result of this asserted erroneous disclaimer, the Regional Director approved the severance and withdrawal of Cases 13-RM-821 and 13-UC-8 which involved the clerical operations at the consolidated freight forwarding terminal. In view of our unit determination herein, the motion to remand for further hearing is hereby denied.

³⁶ The designation by which Local 710 desires to appear on the ballot.

³⁷ The designation by which BRC desires to appear on the ballot.