of June 22, 1966, and by this Supplemental Decision and Direction, and that he proceed further in accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended.

Beacon Photo Service, Inc., Employer-Petitioner *and* Blueprint, Photostat & Photo Employees Union, Local 249, International Jewelry Workers Union, AFL-CIO. Case 29-RM-107.

March 30, 1967

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Richard J. Weisberg. 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 National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, including the briefs filed by the Employer-Petitioner and the Union, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Union contends that the Board should defer to the arbitration procedure of the collective-bargaining contract to which the Employer and the Union are parties and dismiss the petition.

The Employer is engaged in the business of developing and processing photographic film for the general public. For many years, it has been a member of an employer association which has bargained with the Union on a multiemployer basis. The collective-bargaining contract presently in effect provides:

> Article I, Section 1:
>
> The Association recognizes that the Union represents a majority of all the employees employed by the Employer members of the Association, individually and collectively. The Association on behalf of itself and all of its members hereby recognizes the Union as the sole collective-bargaining agent for all employees of the Employers who are members of the Association.
>
> Article II, Section 1 G:
>
> The term "plant" or "shop" as used herein means each separate photo finishing plant or plant doing work connected with photo finishing, maintained by an Employer in New York Metropolitan Area, and this collective agreement shall apply to such "plants" or "shops".
>
> Article VII, Section 3:
>
> Any disputes, differences or grievances which may arise concerning the terms of this agreement or the performance of the terms of this agreement or any other disputes, differences or grievances connected with this agreement, shall be settled by arbitration which said arbitration must commence within five days after written demand therefor.

Until the summer of 1965, the Employer had only one plant which was located in Brooklyn, New York. In July 1965, it opened a second plant in Rockville Centre, Long Island, New York, about 25 miles from the Brooklyn plant. In May 1966 the Union requested the Employer to recognize it as the bargaining representative of the Rockville Centre plant employees, asserting that recognition was required by the terms of the existing collective-bargaining contract. The Employer refused the request upon the ground that the Union did not represent a majority of employees at the Rockville Centre plant. Thereafter, the Union initiated proceedings to compel arbitration of a grievance based on the Employer's refusal to grant the recognition requested, and the Employer filed the present petition.

There are two issues presented by this case: (1) whether the multiemployer collective-bargaining contract relied upon by the Union was intended to cover the subsequently established Rockville Centre plant; and (2) whether, assuming the first question is answered in the affirmative, the contracting parties could so extend the contract to the Rockville Centre plant without the consent of the latter's employees. The first question can be answered by an arbitrator, but the second question is only for the Board. Even if an arbitrator should decide that the existing contract was intended to cover employees to be hired after the execution of the contract at new facilities of the Employer, the Board will nevertheless refuse to find the contract a bar to a petition seeking to resolve a question of representation at the new facilities unless these are an accretion to the contract unit.[1]

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[1] *Pullman Industries, Inc.*, 159 NLRB 580.

Accordingly, if the Rockville Centre plant is not an accretion to the existing multiemployer unit, nothing is to be gained by postponing consideration of this case until completion of the pending arbitration proceeding. We turn to this question.

The two plants are engaged in essentially the same operation. The Brooklyn plant has approximately 62 production employees, the Rockville Centre plant has approximately 70. When the Rockville Centre plant was opened, only three production employees at the Brooklyn plant were transferred to the new location and these three employees were made supervisors. All other employees at Rockville Centre were newly hired. No employees at the Brooklyn plant have been laid off or discharged as the result of the opening of the new plant, and there has been no decrease of work at the former location. None of the operating machinery at the Brooklyn plant was transferred to the Rockville Centre plant.[2]

Each of the plants is a self-contained operation. Each has its own plant manager and supervisors, keeps its own bank and payroll accounts and records, and handles its own purchasing and billing. There is no interchange of personnel between the plants. Except for a small amount of print enlargement and copy work performed for Rockville Centre by the Brooklyn plant, there is no interchange of work between the two plants.

Although work is the same at both plants, wages, hours, and working conditions are different because the terms of the existing collective-bargaining agreement applicable to the Brooklyn plant have not been extended to the Rockville Centre plant.

In view of the foregoing, we find that the Rockville Centre plant is not an accretion to the existing contract unit and, therefore, that the collective-bargaining contract relied upon by the Union is not a bar to a present election.[3] Accordingly, we further find that a question concerning representation exists among the employees of the Rockville Centre plant within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer-Petitioner seeks an election in a unit of production and maintenance employees at the Rockville Centre plant, excluding office clerical employees, executives, foremen, comptrollers, credit managers, engineers, advertising managers, outside salesmen, confidential secretaries, supervisors, and guards as defined in the Act. The Union declined to take any position regarding the appropriate unit, merely noting that the contract unit at the Brooklyn plant does not exclude office clericals.

We find that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Rockville Centre, New York, plant, excluding office clerical employees, executives, foremen, comptrollers, credit managers, engineers, advertising managers, outside salesmen, confidential secretaries, guards, and supervisors as defined in the Act.

[Text of Direction of Election[4] omitted from publication.]

[2] One printing machine which was not being used at the Brooklyn plant was transferred to the Rockville Centre plant for storage purposes only.

[3] *Pullman Industries, Inc*, *supra*, *Morgan Transfer & Storage Co, Inc.*, 131 NLRB 1434; *Buy Low Supermarket, Inc*, 131 NLRB 23.

[4] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 29 within 7 days after the date of issuance of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

Colo. Well Service, Inc. *and* International Union of District 50, United Mine Workers of America, Petitioner. Cases 27–CA–2017 and 27–RC–2982.

March 30, 1967

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On December 1, 1966, Trial Examiner Stanley Gilbert issued his Decision 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 attached Trial Examiner's Decision. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended that such allegations be dismissed, as set forth in the attached Decision. In addition, with regard to the election held in Case 27–RC–2982, the Trial Examiner recommended sustaining the challenges to the ballots of driller-operators Brenton, Burchett, Sims, Halcomb, Tullio, Wood, and Temples, and overruling to challenge to the ballot of employee Bradley. Thereafter, the General Counsel filed exceptions to the Decision and a supporting brief, and the Respondent filed cross-exceptions and a brief in support thereof, and a brief in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its