(B) All wrapping machine operators, ingredient scalers, icing makers or fruit cooks, head checkers, receiving and shipping clerks, excluding all other employees.

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

[4] Locals 218 and 465 requested that, in the event that the Board directs separate elections among the employees in units (A) and (B), Local 218 desired to go on the ballot in the election in unit (A) and Local 465 desired to appear on the ballot in the election in unit (B). In view of our unit findings herein, we grant the request.

The Petitioner has not indicated whether it desires to go to an election in the units herein found appropriate. In light of this circumstance, we shall accord it a place on the ballot in both elections. However, the Petitioner may withdraw its petitions in these cases in the event it does not wish to participate in separate elections by so notifying the Regional Director within 10 days from the date of this Direction of Elections.

Vickers, Incorporated [1] *and* International Union, Allied Industrial Workers of America, AFL-CIO, Petitioner. *Case No. 17-RC-2957. September 28, 1959*

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 William J. Cassidy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 certain employees of the Employer.

3. Pursuant to a stipulation for certification upon consent election on April 21, 1958, an election was conducted on May 28, 1958, in a unit consisting of all the Employer's salaried employees. On June 6, 1958, the Board certified that neither the instant Petitioner nor the Intervenor in that proceeding—International Union of Electrical Radio and Machine Workers, AFL-CIO—had received a majority of the valid votes cast and neither was the exclusive representative of the employees concerned. The petition herein was filed on March 19, 1959 seeking, in effect, a unit of the Employer's salaried technical, clerical, and professional employees.

The Employer contends that the proscriptions of Section 9(c)(3) of the Act [2] require dismissal of the present petition because (1) the Petitioner is seeking an election in a unit which is merely a segment of the larger salaried employees unit in which an election was con-

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

[2] "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held . . . ."

ducted less than 12 months before the filing of the petition and (2) the petition is untimely because it was filed within a year of the certification of results of the last election, i.e., 70 days or 78 days before the end of the 12-month period prescribed in Section 9(c)(3) depending upon whether the date of balloting or the date of certification of results is used.

The Board has consistently found that Section 9(c)(3) does *not* preclude for a 12-month period the holding of an election in a larger unit, such as a plantwide unit, where there has been a previous election in a smaller unit, such as a craft, because the subsequent election is not being conducted in a "unit or . . . subdivision" in which the earlier election was held.[3] Here, the converse situation exists. The earlier election was held in a larger unit of all salaried employees and the present petition requests a smaller unit of some of those same employees.

However, assuming *arguendo* that this provision of Section 9(c)(3) is applicable here, we nevertheless find that under existing Board precedent an election is warranted. The Board has interpreted the time limitations of Section 9(c)(3) to preclude only the holding of an election within 1 year after the date of balloting of the last valid election,[4] and not to affect its discretion with respect to the timeliness of filing of the subsequent petition. Thus, the Board's well-settled rule has been that where the petition is filed *at or near the close of the year* after an election in which no bargaining representative was selected, it is timely.[5] Under this rule, as the instant petition was filed 70 days before the end of the 12-month period (which began to run on the date of the balloting of the earlier election), it was filed near the close of the year and was timely. Accordingly, we find without merit the contentions of the Employer that the petition should be dismissed.

As indicated in recent decisions revising the contract-bar rules,[6] the Board is convinced of the desirability of establishing *specific* periods for the timely filing of petitions. A rule, such as the present one, which in determining timeliness applies the rather vague and indefinite standard of whether the petition is filed at or near the close of the year, derogates from this salutary objective. Therefore, we have decided that with regard to petitions filed hereafter, such petitions will not be entertained if filed more than 60 days prior to the anniversary date of an election, as prescribed in Section 9(c)(3), in

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[3] *Thiokol Chemical Corporation, Redstone Division,* 123 NLRB 888, and cases cited therein.

[4] *Mallinckrodt Chemical Works,* 84 NLRB 291.

[5] *Igleheart Brothers Division, General Foods Corporation,* 96 NLRB 1005; *The Heekin Can Company,* 97 NLRB 783; *Coastal Drydock & Repair Corp.,* 107 NLRB 1023; *Remington Rand, Inc., Engineering Research Associates Division,* 112 NLRB 1381; *Casey-Metcalf Machinery Co., et al.,* 114 NLRB 1520; *The Stickless Corporation,* 115 NLRB 979; *Weston Biscuit Company, Inc.,* 117 NLRB 1206.

[6] See, for example, *Deluxe Metal Furniture Company,* 121 NLRB 995.

which no bargaining representative was selected. Petitions filed more than 60 days before the anniversary date will be dismissed forthwith.

We find that 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. The petition describes the unit sought as follows:

> All employees in the Engineering Department of Vicker's, Inc., Joplin Plant, Aero Division, including process engineers, tool designers, draftsmen, blueprint clerks, engineering typists, tool crib clerk, time and motion study analyst, methods analyst, plant layout, products engineer and machine control clerks, but excluding supervisory employees and guards as defined in the Act.

This unit comprises, with a few exceptions, the technical employees in the Employer's industrial engineering department. The Petitioner, on the record, has indicated that it is interested principally in representing the technical employees of the Employer. Although the Employer contends that the technical employees in the unit requested by the Petitioner are only a portion of all its technical employees, it is clear from the record and the Petitioner's brief that it alternatively seeks to represent all the Employer's technical employees, a unit which the Board customarily finds appropriate. Therefore, it is necessary to determine which of the classifications of employees properly belong in a technical unit.

As to composition, it is clear that the technical unit would include at least the process engineers (some of whom the Employer apparently classifies as special assignment process engineers), tool designers, draftsmen, plant layout men (some of whom the Employer apparently classifies as special assignment plant layout men), and time and motion study men.[7] The Employer concedes that the first three of these classifications are technical, but disputes the status of the plant layout men and of those senior time and motion study men who do methods analysis. As to the plant layout men, the description of their duties in the record makes it quite clear that they are technicals, and we so find.[8] Regarding the senior time and motion study analysts who also do methods analysis, the Employer contends that they are professional employees, relying on the Board's decision in *General Electric Company*, 89 NLRB 726. However, in *Florence Stove Company*,[9] where a similar classification was involved, the Board found them to be technicals, not professionals, and specifically overruled the *General Electric* case to the extent that it could be in-

[7] This classification includes senior time and motion study analysts who also do methods analysis. These latter employees are referred to in the Petitioner's unit description as "method analysts."

[8] See *The Timken-Detroit Axle Company*, 95 NLRB 736.

[9] 94 NLRB 1434, 1436.

terpreted to mean that employees in this classification are necessarily professional within the meaning of Section 2(12) of the Act. Moreover, in recent Board decisions we have found, as we do in this case, that time and motion study men such as are involved herein are technicals and not professionals.[10]

The Petitioner contends that the four employees who are classified by the Employer as blueprint clerks should be included in the technical unit. Their duties consist of keeping files and records of all "products of engineering drawings" and reproducing and distributing them to appropriate places. The Employer would exclude them because it alleges that their duties require little training or skill and their "products" go to the production control department. However, these positions have generally been held by persons who have had prior technical training. And, the Employer explained that they were assigned to the industrial engineering department ". . . because [their work] relates to this kind of activity." Moreover, their duties and interests appear to be related intimately to those of the draftsmen, whom the Employer concedes to be technicals. For, according to the undisputed testimony of the Petitioner's representative, the classification blueprint clerk represents the first step in the line of progression into the drafting jobs. Furthermore, the Board has found that blueprint clerks performing similar functions to those involved herein properly belong in a technical unit.[11] Accordingly, we shall include them in the unit found appropriate herein. Of the remaining employees sought, the record reveals that five employees in four classifications requested by the Petitioner, i.e., engineering typist, machine control clerk, maintenance clerk, and tool crib clerk,[12] are clericals. We shall therefore exclude them from the unit.

The Employer has two employees who are described by the Petitioner as products engineers and are classified by the Employer as resident engineers. It is clear from the description in the record of their qualifications and duties that they are professional employees within the meaning of the Act. Under Section 9(b)(1) of the Act, we are precluded from including professional employees in the same unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Ordinarily we would direct a self-determination election among these employees to determine their desires in this respect. However, as it appears that the Petitioner has no showing of interest among the products or resident engineers, we will not conduct a separate election among them, but will exclude them from the unit found appropriate herein.[13]

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[10] See, e.g., *Chapman Valve Manufacturing Company*, 119 NLRB 935; *Miehle Printing Press & Manufacturing Company*, 113 NLRB 1252.

[11] *Kelsey Hayes Wheel Company*, 85 NLRB 666, 670, and cases cited therein.

[12] The duties of these employees, as described in the record, clearly reveal that they are clerical employees.

[13] *Liggett Drug Company, Inc.*, 110 NLRB 949, 950.

As we have found that the process engineers, special assignment process engineers, tool designers, draftsmen, plant layout men, special assignment plant layout men, blueprint clerks, and time and motion study men are technical employees, and as the record does not indicate there are other technical employees in the plant, we accept the Petitioner's alternative position and find that these employees are entitled to separate representation as an appropriate unit.[14] The Petitioner has an adequate showing of interest in such a unit, and we shall therefore direct an election in a separate unit of technical employees in accordance with the Petitioner's alternate request.

Accordingly, we find that the following employees of the Employer at its Joplin, Missouri, plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All technical employees, including process engineers, special assignment process engineers, tool designers, draftsmen, plant layout men, special assignment plant layout men, blueprint clerks, and time and motion study men, excluding the engineering typist, machine control clerk, maintenance clerk, tool crib clerks, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and FANNING took no part in the consideration of the above Decision and Direction of Election.

[14] *Eastern Corporation*, 116 NLRB 329.

Diamond Mills Corporation (Hanover Division) ***and*** **American Federation of Hosiery Workers, AFL-CIO.** *Case No. 11-RC-1227. September 28, 1959*

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On June 25, 1959, a panel of the Board issued its Decision and Direction of Election,[1] as amended on July 16, 1959, in the above-entitled proceeding in which it excluded, as supervisors, from the unit found appropriate, among others, seamless knitting machine fixers and a looper fixer. Thereafter, on July 13, 1959, the Petitioner filed a petition requesting the Board to reconsider its determination upon the record as made and include the fixers referred to in the appropriate unit, or, in the alternative, that the Board reopen the record for the taking of additional testimony in the matter.

[1] 123 NLRB 1796.