(maintenance), wire chief, cable splicer and helper, test boardman, central distribution office technicians, and shift supervisors, but excluding office clerical employees, salesmen, executives, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.[4]

[Text of Direction of Election omitted from publication.]

[4] There is no dispute as to the composition of the unit. The parties stipulated to exclude the two service managers as supervisors

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Berea Publishing Company *and* Cleveland Printing Pressmen Union No. 56, affiliated with International Printing Pressmen and Assistants' Union of North America, AFL–CIO, Petitioner [1]

Berea Publishing Company *and* Cleveland Typographical Union No. 53, affiliated with International Typographical Union, AFL–CIO, Petitioner. *Cases Nos. 8–RC–4602 and 8–RC–4589. January 7, 1963*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Bernard Levine, 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 these cases, the Board finds:

1. The Employer contends that the Board should not assert jurisdiction. The parties stipulated that the Employer publishes a newspaper which carries advertisements amounting to $4,000, purchased by national advertising agencies, of nationally sold products. Further, the Employer derives an annual revenue of $294,512.48 from its operations, $98,230.66 of which is derived from job printing. In view of the foregoing, we find that the Employer is engaged in commerce within the meaning of the Act, that its business is essentially the operation of a newspaper, and that its gross revenues warrant the assertion of jurisdiction.[2]

2. The labor organizations involved claim to represent certain employees of the Employer.

3. In Case No. 8–RC–4589, a question exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

[1] The name of the Petitioner in Case No 8–RC–4602 appears as amended at the hearing.

[2] *Belleville Employing Printers,* 122 NLRB 350; *Chicago North Side Newspapers,* 124 NLRB 254; *The McMahon Transportation Company,* 124 NLRB 1092.

In Case No. 8–RC–4602, no question exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons:

The Petitioner, hereinafter referred to as the Pressmen, seeks a unit of all employees in the Employer's printing press departments, including letterpressmen and offset pressmen and their helpers, excluding composing room employees, office clerical employees, professional employees, guards, all other employees, and all supervisors as defined in the Act. The record shows that in the letterpress department the Employer has one employee who spends all of his time operating a letterpress and a helper who, however, spends almost all of his time working in other departments. Further, the record shows that presently there are no employees operating the offset press or working in the offset press department.[3] Mindful of our determination to reestablish *The Ocala Star Banner*, 97 NLRB 384, we nonetheless conclude that the presence of this helper is insufficient to remove the situation from the line of Board cases that it will not certify one-man units.[4] Accordingly, we shall dismiss the Pressmen's petition.

4. The appropriate unit:

The Petitioner, Cleveland Typographical Union No. 53, affiliated with International Typographical Union, AFL–CIO, in Case No. 8–RC–4589, seeks a unit of all employees in the Employer's composing room and art production department excluding office and clerical employees, professional employees, guards and watchmen, all other employees, and all supervisors as defined in the Act. The Employer contends that a unit of composing room employees is appropriate, but that the inclusion of the art production department employees is unwarranted because they are engaged in offset process and have skills distinctly different from those of the composing room employees. There is no history of collective bargaining.

The Employer's operations are divided into a business department, an editorial department, a composing room, an art production department, a mailing and bindery department, an offset press department (which, as noted above, is not operating at present), and a letterpress department. All of these departments are located on the same floor, separated by cabinets, except for the art production department, which is located on another floor. The composing room employees and the letterpress employees all have the same supervision. The employees in the art production department are supervised by the "art director."

The composing room is staffed with a compositor, a linotypist, a proofreader, and a stereotyper who spends 40 percent of his time work-

[3] The record shows that as of the time of the hearing, all of the Employer's offset printing is performed by another company, not involved in this proceeding

[4] *Cutter Laboratories*, 116 NLRB 260. Member Leedom agrees with this result in view of his adherence to the *Denver-Colorado Springs-Pueblo Motor Way* case, 129 NLRB 1184. See footnote 8, *infra*.

ing in that department, 50 percent of his time working in the mailing and bindery department, and 10 percent of his time as a truckdriver. These employees perform the usual composing room duties, mainly in connection with the job printing handled by the Employer. However, 10 percent of the copy for the newspaper is set up in the composing room.

The art production department is staffed with two Justowriter operators. The Justowriter is a machine with a keyboard similar to the typewriter which prepares punched tapes which are fed into a reproducer, the output of which is columnar copy suitable for offset reproduction. Also there are two pasteup workers and a headline writer. The former paste up the output of the Justowriter and proofs of copy prepared in the composing room on sheets of paper for offset reproduction. It appears that some of these employees also engage in proofreading. The output of the art department is used exclusively in the publication of the Employer's newspaper through offset process.

Although the record shows that the composing room and art production department engage primarily in different processes, it also shows sufficient factors to support a finding that the composing room and art production employees have a community of interest and therefore constitute an appropriate unit. Thus, there is no history of bargaining; no union seeks to represent the departments separately; both departments prepare copy for reproduction; both departments perform functions requiring similar skills, such as proofreading, the operation of keyboards, and the laying out of copy; copy prepared in the composing room is utilized in the art production department; and the Employer operates a small plant where the employees in both departments share the same working conditions and overall supervision. Accordingly, under the circumstances of this case, we find that the requested unit of composing room and art production employees is appropriate.

The part-time employees: The Employer contends that the employees in the art production department should not be included in the unit because they are part-time employees. Thus, the record shows that the Justowriter operators regularly work 4 days a week, the headline writer regularly works 2½ days a week, one of the pasteup workers regularly works 2½ days a week, and another regularly works 3½ days a week. It appears that these employees perform no other work for this Employer. Further, the record shows that the stereotyper in the composing room spends 40 percent of his time working in the unit and the rest of his time working in the Employer's other departments.

In cases involving employees who work only part time for an employer, the Board determines unit inclusion on the basis of whether the employee is regularly employed for sufficient periods of time to

demonstrate that he, along with the full-time employees, has a substantial interest in the unit's wages, hours, and conditions of employment.[5] However, where an employee performs dual functions for the same employer the Board has established different criteria for unit inclusion. Thus, the *Denver-Colorado Springs-Pueblo Motor Way*[6] decision sets forth, as a requirement for the unit inclusion of a dual-function employee, that he must have a preponderant interest in unit work, to be determined by whether the employee ". . . is primarily engaged in, and spends the major portion of time, i.e., more than 50 percent of his time, performing tasks or duties alike or similar to the ones performed by the other employees in the requested unit." In establishing this rule, *Denver-Colorado Springs* overruled the Board's prior long-standing rule established in *Ocala Star Banner*[7] which did not differentiate between part-time and dual-function employees. However, we now believe that a dual-function employee devoting less than 51 percent of his time to unit work may have sufficient interest in the unit's conditions of employment to be included in the unit. In this respect, we can perceive no distinction between the part-time employee, who may work for more than one employer, and the employee who performs dual functions for the same employer. We believe the policies of the Act are best effectuated by according to each the same rights and privileges in the selection of the majority representative for the unit in which he works. Accordingly, we hereby reestablish the principle of *Ocala Star Banner* as the controlling law in this area, and we shall apply it here and in all future cases.[8]

As the record demonstrates that the employees in the art production department are regular part-time employees and that they and the stereotyper regularly devote sufficient periods of time to the unit work to demonstrate that they, along with the full-time employees in the unit, have a substantial community of interest in the unit's wages, hours, and conditions of employment, we shall include them.

Upon the entire record herein, we find that the following employees of the Employer at its Berea, Ohio, plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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[5] *Florsheim Retail Boot Shop*, 80 NLRB 1312, 1315; *Kennecott Copper Corporation, Ray Mines Division*, 106 NLRB 390, 394; *Dorothy E Fitzpatrick, d/b/a Associated Business Service*, 107 NLRB 219; *Sears, Roebuck & Company*, 112 NLRB 559, 568; *Greenberg Mercantile Corp*, 112 NLRB 710; *Jat Transportation Corp, et al*, 128 NLRB 780, 786; *Southern Illinois Sand Co., Inc.*, 137 NLRB 1490. See, also, *The Ocala Star Banner*, 97 NLRB 384, and cases cited therein

[6] 129 NLRB 1184, Member Fanning dissenting.

[7] *Supra*

[8] *Denver-Colorado Springs-Pueblo Motor Way, supra*, and cases applying its rule are hereby overruled to the extent inconsistent herewith. As Member Leedom would, for the reasons stated by Member Rodgers in his dissent herein, continue to adhere to the unit placement rule set forth in the *Denver-Colorado Springs* case, he joins Member Rodgers in that part of his dissent and does not join his other colleagues in the inclusion of the stereotyper in the unit

All composing room and art production department employees, including compositors, linotypists, proofreaders, stereotypers, the Justowriter operators, headline writers, and pasteup workers, but excluding all other employees, office and clerical employees, professional employees, guards and watchmen, and all supervisors as defined in the Act.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 8–RC–4602 be, and it hereby is, dismissed.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

I disagree with my colleagues' finding that the unit sought by the Typographical Union in Case No. 8–RC–4589 is appropriate, and, further, my colleagues' decision to overrule *Denver-Colorado Springs-Pueblo Motor Way, supra.*

As to the unit issue, it is clear that what has been found appropriate is a heterogeneous group embracing both letterpress (composing room) and lithographic preparatory (art production) employees. The two groups of employees are separately located, separately supervised, and are engaged in essentially different kinds of printing work. The composing room employees, on the one hand, are skilled craftsmen while, on the other, the Justowriter operators and pasteup employees in the art production department are not craftsmen. Finally, there is no interchange between these two separate groups. On the basis of both Board precedent [9] and the factors noted above showing a lack of a community of interest between the two groups, I would find the single combined unit inappropriate.

With regard to the *Denver-Colorado Springs* case, I would adhere to the unit placement rule set forth in that decision and include in proposed units only those dual-function employees who spend more than 50 percent of their time in unit work. As the majority stated in *Denver-Colorado Springs:* "It seems reasonable to conclude that the preponderant interests of an employee lie with those of his fellow workers who perform similar tasks as the one in which he spends the majority of his time. The bargaining representative selected to represent the unit of such employees is therefore the one to represent an employee performing dual functions." [10] I consider this to be a sound reason for the rule and I do not believe that my colleagues' action in upsetting this rule is warranted.

Moreover, and apart from my basic disagreement with my colleagues on this rule, I believe that they have taken inconsistent positions in

[9] See, for example, *Ditto, Incorporated,* 126 NLRB 135, 137.
[10] 129 NLRB at p. 1185.

this case. In overruling *Denver-Colorado Springs*, they assert it to be their intention to accord dual-function employees the same rights enjoyed by part-time employees. However, with respect to the unit sought by the Pressmen in Case No. 8–RC–4602, my colleagues seemingly ignore their own new rule. Here, the pressmen's helper spends 20 percent of his time employed in that capacity, yet for some unexplained reason my colleagues are excluding him from the Pressmen's unit. If the unit placement rules governing part-time employees are not to be applied to dual-function employees, as my colleagues say, I fail to understand why the helper—who clearly is a regular, as distinguished from a casual, employee—should be excluded since if he were a part-time employee there is no question but what he would be included.[11]

As I would find the unit sought by the Typographical Union inappropriate, I would dismiss its petition.

[11] *Joseph A. Goddard Company,* 83 NLRB 605; *R. W. McDonnell and E. M. Bishop d/b/a Lone Star Boat Mfg. Co.,* 94 NLRB 19; *Decatur Transfer & Storage, Inc.,* 105 NLRB 633; *Allstate Insurance Company,* 109 NLRB 578; *Personal Products Corporation,* 114 NLRB 959.

E. S. Kingsford, d/b/a Kingsford Motor Car Company *and* Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. *Case No. 18–CA–1451. January 8, 1963*

DECISION AND ORDER

On October 18, 1962, Trial Examiner Lee J. Best issued his Intermediate Report 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 Intermediate Report. Thereafter, the Respondent filed a motion to dismiss the complaint or, in the alternative, to reopen the record so that it might adduce further evidence. The General Counsel opposed the Respondent's motion.[1]

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 Leedom, Fanning, and Brown].

The Board has reviewed the Trial Examiner's rulings and finds no prejudicial error. The rulings are hereby affirmed. The Board

[1] The motion is denied. The assertions in the motion are more properly the subject matter for consideration at the compliance stage of this proceeding. It should be emphasized that the Board's Order in this case is directed to the Respondent *and* its successors and assigns.