

In the Matter of AMERICAN ENKA CORPORATION (LOWLAND),¹ EMPLOYER and TEXTILE WORKERS UNION OF AMERICA, CIO, PETITIONER

Case No. 10-RC-211.—Decided November 12, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations involved claim to represent employees of the Employer.
3. 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.³

¹ The name of the Employer appears as amended at the hearing.

² The Employer's request for oral argument is denied inasmuch as the record, in our opinion, adequately presents the issues and positions of the parties.

The Employer contends that the Board should not proceed with this case because there are pending unfair labor practice charges against the Employer. A search of our records discloses no pending unfair labor practice charges affecting the plant involved in this proceeding. Accordingly, we find no merit in the Employer's contention.

*Chairman Herzog and Members Houston and Gray.

³ The Employer moved to dismiss the petition on the ground that the real party in interest in this case is not the Petitioner, but the Congress of Industrial Organizations with which the Petitioner is affiliated. In *Matter of McGraw-Curran Lumber Co., Inc.*, 79 N. L. R. B. 705, the Board considered and rejected substantially the same contention urged by the Employer herein. For the reasons set forth in that case (and cases cited therein), the Employer's motion to dismiss is denied. Nor do we find any merit in the Employer's speculative contention that the petition should be dismissed because the Petitioner or Intervenor, if certified, contemplates bargaining through a local union (to be established) which may not comply with the filing requirements of Section 9 (f), (g), and (h) of the

4. The appropriate unit :

The parties are generally agreed that the appropriate unit should consist of all hourly paid employees at the Employer's Lowland, Tennessee, plant, excluding instructors on the pay roll of the Asheville, North Carolina, plant, all office and clerical employees (including those in the employment, hospital, protection, pay roll, accounting, purchasing, standards, filing, industrial relations, records, plant manager's and chief chemist's offices, and chemical laboratory, engineering and telephone departments), guards, professional employees, and all supervisors as defined in the Act.⁴ They disagree, however, concerning the inclusion of textile laboratory employees.

*Textile laboratory employees:*⁵ The record discloses that the textile laboratory workers will be engaged in testing various kinds of yarn for quality, strength, and elongation; these tests, for the most part, are of a routine nature. They will receive their training at the plant, and will not be required to possess professional skill or education. They will be hourly paid, and will have the same working conditions and employee benefits as the other production and maintenance employees in the plant. Upon the basis of the foregoing, and upon the entire record in the case, we believe that the employees in question will constitute an integral part of the production process, and we shall, therefore, include them in the unit.

We find that all hourly paid employees of the Employer at its Lowland, Tennessee, plant, excluding instructors on the pay roll of the Asheville, North Carolina, plant, all office and clerical employees (including those in the employment, hospital, protection, pay roll, accounting, purchasing, standards, filing, industrial relations, records, plant manager's and chief chemist's offices, and chemical laboratory, engineering and telephone departments), guards, professional employees, and all supervisors (including inspectors, technicians, the chef and head baker), constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9 (b) of the Act.

5. The determination of representatives :

The Employer contends that an election at the present time would be premature, and urges that the Board defer the election until

Act. *Matter of Oppenheim Collins & Co., Inc.*, 79 N. L. R. B. 435 The Employer also moved to dismiss the petition on the ground that it had not declined to recognize the Petitioner prior to the filing of the Petition. The record shows that such a declination occurred after the filing of the petition. The motion is hereby denied for the reasons set forth in our Supplemental Decision in *Matter of Advance Pattern*, 80 N. L. R. B. 29.

⁴ The parties agreed and the record shows that inspectors, technicians, the chef, and head baker possess supervisory powers, and we shall, therefore, exclude them from the unit.

⁵ At the time of the hearing the only textile laboratory employees was the head of the department; the Employer testified, however, that it would employ approximately 8 to 10 hourly paid employees in that department.

February 1949, at the earliest. At the time of the hearing the Employer employed approximately 660 employees, of whom 22 had completed their probationary period.⁶ As a consequence of new machinery installation and increased production, the number of employees will increase to a peak of 1,060 in May 1949, and thereafter will level off to a stable complement of approximately 814 in August 1949. It appears from the record that the plant, although new, is currently in production and that the contemplated increase in the number of employees, for the most part, will be merely expansions of classifications already in existence. Moreover, the employees in the present complement of the plant have a reasonable expectation of becoming permanent employees and appear to be representative and to constitute a substantial proportion of the contemplated working force. Under these circumstances, we see no reason for departing from our usual policy of directing an immediate election.⁷

The Employer also contends that probationary employees and trainees should not be permitted to participate in any election which the Board may direct in this proceeding.

All new employees of the Employer are subject to a 6 months' probationary period, during the first 6 weeks of which they are referred to as trainees. It appears from the record that they have a reasonable expectation of becoming permanent employees and that, upon the completion of their probationary period they are granted an increase in pay and additional employee benefits. They are engaged in regular production work and have substantially the same duties and working conditions as those of comparable permanent employees. Under these circumstances, we shall permit the probationary employees and trainees to vote in the election hereinafter directed.⁸

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, in-

⁶ By February 1949, approximately 50 percent of the workers will have completed their probationary period and become permanent employees.

⁷ *Matter of Western Electric Company, Incorporated*, 78 N. L. R. B. 160.

⁸ *Matter of Beattie Manufacturing Company*, 77 N. L. R. B. 361.

cluding employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Textile Workers Union of America, CIO, or by United Textile Workers of America, AFL, or by neither.