

In the Matter of A. J. SIRUS PRODUCTS CORPORATION OF VIRGINIA,¹
EMPLOYER and INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
A. F. OF L., PETITIONER

Case No. 5-RC-257.—Decided April 25, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Robert E. Mullin, 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.

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-member panel [Members Reynolds, Murdock, and Gray].

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 Petitioner is a labor organization claiming 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.
4. The appropriate unit:

The Petitioner has requested a unit composed of all production employees in the cutting, sewing, padding, pasting, packing, and acetate departments of the Employer's plant, located at Newport News, Virginia, including floor boys, and shipping clerks, but excluding the production employees in the bag making department,² maintenance employees, clericals, professional employees, guards, and supervisors, as defined in the Act.³ The Employer objects to the inclusion in the unit of shipping clerks, floor boys, and certain alleged supervisory employees hereinafter discussed.

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

² During the hearing, the Petitioner first sought to include the production employees in the bag making department, but withdrew such request before the hearing concluded.

³ The unit description appears as amended at the hearing.

The Employer is engaged primarily in the manufacture of powder puffs. However, about a week before the hearing, it installed a bag making department which now manufactures cosmetic bags. The installation of this department was decided upon because the Employer's parent company in New York, which is engaged in the manufacture of cosmetic bags, was unable to meet the demand. The Employer could not predict, at the hearing, whether the bag making department will be of a temporary or a permanent nature. There are 6 or 7 persons employed therein, who were hired on the open market.⁴ There are about 75 employees at the plant, of whom 65 are included in the unit sought. There are 2 maintenance employees whom neither the Petitioner nor the Employer would include within the unit.⁵ Although the record is not clear as to the nature of the duties performed by these 2 maintenance employees, it appears that one of them is a sewing machine maintenance mechanic, and the other is a porter who also acts as watchman. There is nothing in the record to show why the unit sought was restricted to production employees, or that a production and maintenance unit would be inappropriate under the circumstances. There is no history of collective bargaining.

The Employer's plant is a small integrated operation. As noted above, its entire staff consists of about 75 employees. The bargaining interests and working conditions of the maintenance employees are similar to those of the production employees. We are of the opinion, therefore, on the facts presented, that an over-all unit of production and maintenance employees will best preserve the rights of the employees herein involved to bargain collectively.⁶ We also believe that the employees in the bag making department should be included within the unit sought.⁷ Although the article manufactured by these employees is different from that manufactured by the other departments, their bargaining interests and working conditions are the same as those of the other production employees.⁸ Were we to exclude such employees from the unit, the effect would be to find appropriate for collective bargaining purposes a group composed of a portion of produc-

⁴ The record discloses that some of the employees engaged in the manufacture of powder puffs might have been transferred to the bag making department.

⁵ No other union seeks to represent these maintenance employees.

⁶ *Matter of Viner Brothers, Inc.*, 80 N. L. R. B. 992; *Matter of McKamie Gas Cleaning Co.*, 80 N. L. R. B. 113; *Matter of Acme Lumber & Supply Co.*, 79 N. L. R. B. 429.

⁷ The Petitioner withdrew its request to include these employees because it was under the misapprehension that such employees would be unable to vote in the election, inasmuch as they began work after the petition was filed.

⁸ While there is some evidence in the record to the effect that the bag making department constitutes an "overflow" from the New York plant, there is no evidence that such department is integrated with the New York plant. Nor is there evidence that the employees therein are listed on the New York plant pay roll, or that they are accountable in any way to the New York plant.

tion employees, which the Board has consistently refused to do.⁹ The Employer's uncertainty as to whether the bag making department will function temporarily or permanently should not preclude the employees therein from asserting their right to choose a bargaining representative. In accordance with the Board's general policy of placing employees with similar interests in the same bargaining unit, we believe, under the present circumstances, that all production and maintenance employees; including floor boys and shipping clerks,¹⁰ of the Employer may be properly included in a plant-wide unit.

There remains for consideration the question of excluding certain employees whom the Employer contends are supervisors within the meaning of the Act.

Conny Terry: This employee serves as an assistant to the general supervisor. She engages in no production work. Her salary is 15 percent higher than that of the other production employees. She has authority effectively to recommend the discharge of other employees. We find, therefore, that she is a supervisor within the meaning of the Act, and we shall exclude her.

Head shipping clerk: The head shipping clerk is in charge of the shipping department. He is paid $33\frac{1}{3}$ percent more than the other employees in such department. He has the authority effectively to recommend the hiring and discharging of other employees. Accordingly, we find that he is a supervisor, and shall exclude him.

Head cutter: The head cutter checks the work of the other employees in the cutting department, and instructs them how to perform their duties. If an employee is deficient in his work, the head cutter reports such deficiency to the head supervisor. However, it appears that a recommendation for the discharge of a deficient employee would emanate from the head supervisor rather than from the head cutter. The head cutter spends the majority of his time in the performance of production work. Although his rate of pay is 50 percent more than the other employees, it would appear that the basis for this higher salary is the nature of the production duties performed, rather than supervisory duties. We do not believe that the head cutter is a supervisor; we shall include him.

In view of the foregoing, we find that all production and maintenance employees in the Employer's plant, including shipping clerks, floor boys, and the employees in the bag making department, but excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for

⁹ See *Matter of General Aniline & Film Corp., Anasco Division*, 80 N. L. R. B. 1352.

¹⁰ See *Matter of Viner Brothers, Inc.*, footnote 6, *supra*, to the effect that floor boys and shipping clerks may be properly included in a production and maintenance unit.

the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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, including 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 or not they desire to be represented, for purposes of collective bargaining, by International Ladies' Garment Workers' Union, A. F. of L.