

In the Matter of LEE-MARK METAL MFG. CO.,<sup>1</sup> EMPLOYER and ROSARIO  
TINE, PETITIONER and LOCAL 155, UNITED ELECTRICAL, RADIO &  
MACHINE WORKERS OF AMERICA, CIO, UNION

*Case No. 4-RD-35.—Decided September 13, 1949*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition for decertification duly filed, a hearing was held before John H. Garver, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

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 Houston, Reynolds, and Murdock].

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 The Petitioner claims that the Union no longer represents the employees of the Employer.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.

The Union and the Employer entered into an agreement effective July 5, 1947, for a term of 1 year.<sup>3</sup> On July 5, 1948, the parties executed a supplemental agreement which, among other things, extended the term of the original contract until July 5, 1949, and thereafter from year to year, unless either party gave to the other written notice of desire to change or terminate at least 60 days prior to the anniversary date. By letter dated May 3, 1949, the Employer notified the Union of its desire to terminate the contract as of July 5, 1949, stating that it intended to negotiate a completely new agreement and concluding: "We shall be pleased to meet with you at our mutual con-

<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> Local 155, United Electrical, Radio & Machine Workers of America, CIO, herein called the Union, failed to appear at the hearing although duly notified thereof.

<sup>3</sup> The contract provided for automatic renewal from year to year thereafter, unless written notice of desire to modify was given by either party to the other 30 days before the anniversary date.

venience to discuss the new contract." As of August 10, 1949, the date of the hearing, the Employer had received no reply to this letter.

Section 9 (c) (1) (A) (ii) of the amended Act empowers the Board to investigate a petition for decertification of a "labor organization which has been certified or is being currently recognized" by the employer. In the instant case, while the Union has not been certified, the Employer's letter of May 3 contained an invitation to continue the parties' previous contractual relationship, and this invitation has never been withdrawn. We are therefore of the opinion that the Union is "currently recognized" by the Employer as the representative of its employees. Accordingly, the requirements of Section 9 (c) (1) (A) (ii) of the Act have been met, and we shall direct an election.<sup>4</sup>

4. All employees of the Employer, excluding office employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>5</sup>

#### DIRECTION OF ELECTION <sup>6</sup>

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, 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 Local 155, United Electrical, Radio & Machine Workers of America, CIO.

<sup>4</sup> We do not construe either the Union's failure to answer the Employer's letter of May 3 or its failure to appear at the hearing as an unequivocal disclaimer of interest by the Union. *Matter of Baltimore Luggage Company*, Case No. 5-RD-21, issued March 23, 1949; *Matter of California Knitting Mills, d/b/a Hollyvogue Sportswear*, 77 N. L. R. B. 574.

<sup>5</sup> This is substantially the unit which was covered in the contract between the Union and the Employer.

<sup>6</sup> The Union is not presently in compliance with the requirements of Section 9 (f), (g), and (h) of the Act. Accordingly, if the Union wins the election and it has not complied with such requirements, the Board will certify only the arithmetical results of the election.