In the Matter of LIMA HAMILTON CORPORATION, EMPLOYER *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 106, CIO, PETITIONER

Case No. 8-UA-1751.—Decided December 7, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Carroll Martin, 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 National Labor Relations Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Petitioner is the exclusive bargaining representative of the employees in the appropriate unit.

The Petitioner alleges, and we find, that more than 30 percent of the employees in the unit represented by the Petitioner desire to authorize the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit.

As the Employer currently recognizes the Petitioner, no question affecting commerce exists concerning the representation of employees of the Employer in the unit sought by the Petitioner.

We find that the requirements for a union-shop authorization election, set forth in Section 9 (e) (1) of the Act, have been met.

4. We find, substantially in accord with the stipulation of the parties, that all production and maintenance employees of the Lima Works of the Employer, including all employees in the schedule department, shop timekeepers and shop time clerks under the supervision of the accounting department, employees in the blueprint room, and locomotive messengers, but excluding all other employees employed in the main office building, engineers and drafting employees employed in the various departmental offices, storeroom and shipping

office clerks, employment clerks, tool draftsmen, clerks in the maintenance engineer's office and tool supervisor's office, all employees employed in the branch offices, traveling representatives of the Employer, salesmen, servicemen, and material tracers, chief engineers in the power plants, hospital and first-aid employees, garage attendants, chemists and laboratory employees, patternmakers, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of Section 9 (e) (1) of the Act.

5. The parties disagree as to the voting eligibility of certain laid-off employees. The Employer contends that they should be found eligible to vote. The Petitioner, on the other hand, urges that they be found ineligible.

The Employer manufactures steam and Diesel locomotives and related equipment at its plant in Lima, Ohio. Because of economic conditions, the Employer's pay roll has gradually declined from approximately 2,672 employees on December 1, 1948, to approximately 875 employees on August 1, 1949, during which period the number of lay-offs, including sick employees and those on leave, increased from 170 to 1,797 employees.[1] Under the terms of a recently expired contract, all laid-off employees are carried indefinitely on a seniority list maintained by the Employer. However, their recall is subject to, and contingent upon, an improvement in business conditions and future orders, the extent of which the Employer was unable to estimate at the time of the hearing.

The Employer asserts that all individuals on the seniority list are entitled to vote, as employees who have been temporarily laid off. In support of its position, the Employer, relying upon the fact that these employees were deemed eligible to vote in the earlier representation proceeding,[2] contends that for this reason also they should be found eligible to vote in any election directed in the present "UA" proceeding.

We find insufficient merit in the Employer's contention. The fact that the names of the employees in question appear on the seniority list as employees temporarily laid off is not controlling. Nor is the fact that these employees were by agreement of the parties included among those eligible to vote at the election in the "RC" proceeding in May, determinative of their voting eligibility in this proceeding.[3]

[1] The parties stipulated an additional 80 employees would be laid off on August 31, 1949.

[2] The Petitioner was certified as the bargaining representative for the Employer's production and maintenance employees as the result of a consent election, conducted and won by it on May 17, 1949. At the conference preceding the election, the parties stipulated that all employees on the Employer's seniority list would be eligible to vote.

[3] The Board has held that there is no requirement that all employees in a bargaining unit be eligible to vote in a subsequent "UA" election. *Tree Fruits Labor Relations Committee,* 83 NLRB 93.

The pertinent issue in determining eligibility is whether such employees now have a reasonable expectancy of reemployment with the Employer in the near future.[4] Under all the circumstances, it would appear that the prospect of any recall of laid-off employees in the immediate future is speculative in character.

We are, therefore, of the opinion that the employees in question as a group have no reasonable expectancy of reemployment, and that their lay-offs for eligibility purposes must be deemed permanent.[5] Accordingly, we find them ineligible to participate in the election hereinafter directed.

DIRECTION OF ELECTION

Pursuant to Section 9 (e) (1) of the National Labor Relations Act, 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 authorize International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 106, CIO, to make an agreement with Lima Hamilton Corporation requiring membership in the aforesaid labor organization as a condition of employment in such unit.

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

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[4] *U. S. Rubber Company (Milan Plant, Footwear Division)*, 86 NLRB 338.

[5] *Waterman Steamship Corporation, Repair Division*, 78 NLRB 20; *Martin J. Barry, Inc.*, 83 NLRB 1146; *F. C. Mason Company*, 86 NLRB 71; *U. S. Rubber Company (Milan Plant, Footwear Division)*, *supra*.