In the Matter of PAGODA KNITTING MILLS, INC., EMPLOYER *and* JOHN J. SNYDER, PETITIONER *and* AMERICAN FEDERATION OF HOSIERY WORKERS, UNION

Case No. 4-RD-36.—Decided December 14, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a decertification petition duly filed, a hearing was held before Harold Kowal, hearing officer. The hearing officer referred to the Board the Union's motion to dismiss the petition on the ground that the Employer's employees are out on a strike against the Employer. For the reasons stated in Section 5, *infra*, this motion is hereby denied. 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 [Chairman Herzog and Members Reynolds 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, an employee of the Employer, asserts that the Union is no longer the bargaining representative of the Employer's employees designated in the petition.

The Union is a labor organization currently recognized by the Employer as the exclusive bargaining representative of the Employer's employees designated in the petition.

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 following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All knitting and auxiliary employees at the Employer's Reading, Pennsylvania, plant, including knitters, seamers, loopers, menders,

examiners, watchmen,[1] and shipping employees, but excluding office and clerical employees, and all supervisors as defined in the Act.[2]

5. The Union objects to our holding an election at this time. It seeks dismissal of the petition on the ground that the employees are now engaged in a strike against the Employer. The record discloses that the employees have been on strike since about September 1, 1949. Although the record is not clear, the strike appears to have arisen as the result of a dispute flowing from the Union's attempt to negotiate a new contract. The Employer and the Petitioner assert, in opposition to the motion, that the very existence of the strike makes advisable an election to determine the question of representation. In proceedings initiated by a petition for certification, it has not been our practice to withhold an election solely because of the existence of a current economic strike.[3] We find no basis in the statute for altering our practice in this decertification case.[4]

We shall, therefore, direct the holding of an immediate election, permitting all employees to participate who were employed during the pay-roll period immediately preceding the date of this Direction. All persons hired since September 1, 1949, the date of the strike, and all strikers shall be presumptively eligible to vote subject to challenge. The challenged ballots shall not be counted unless they affect the results of the election, in which case the question as to which of these ballots shall be opened and counted will await further investigation concerning the employment status of the affected individuals.[5]

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, 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

[1] The watchmen spend the greater part of their time in maintenance work. We find that they are not guards within the meaning of the Act, and shall, according to our usual practice in such cases, include them in the unit. *Texsun Citrus Exchange,* 82 NLRB 540.

[2] The parties agree that this unit is appropriate. The Union has held a series of contracts covering this unit, the latest having expired on August 31, 1949.

[3] See *Cocoline Products, Inc.,* 79 NLRB 1426; *Ace Novelty Manufacturing Company,* 77 NLRB 945; *Caterpillar Tractor Co.,* 77 NLRB 457; *Pipe Machinery Company,* 76 NLRB 247.

[4] *National Color Printing Company,* 78 NLRB 147; *Solar Electric Corporation,* 77 NLRB 414; *Colonial Hardwood Flooring Co., Inc.,* 76 NLRB 1039.

[5] *Cocoline Products, Inc., supra.*

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, to determine whether or not they desire to be represented, for purposes of collective bargaining, by American Federation of Hosiery Workers and Branch 10 American Federation of Hosiery Workers.