

In the Matter of YORK BAND INSTRUMENT COMPANY, EMPLOYER *and*
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), PETITIONER

Case No. 7-RC-692.—Decided December 30, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before W. A. Reinke, hearing officer. 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 Houston and Reynolds].

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. 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 Employer contends that in October 1949, it renewed a collective bargaining agreement with York Band Employees Organization¹ for an additional year to October 1950 and that this contract is a bar.

On October 15, 1947, the Employer and York Band Employees Organization signed a contract which contained the following termination clause:

¹ York Band Employees Organization did not intervene in this proceeding. At the hearing, however, the organization's president, called as a witness by the Petitioner, testified that the organization did not consider the contract a bar.

Article X

The principles hereinabove set forth shall remain in full force and effect from year to year on notice by the YORK BAND INSTRUMENT COMPANY and on acceptance by the YORK BAND EMPLOYEES ORGANIZATION

On October 14, 1949, after the Petitioner had filed the present petition with the Board on September 19, the Employer notified its employees that it was continuing the existing agreement. The contracting union did not answer this notice. Even assuming, as the Employer contends, that the union's silence constituted an acceptance of the Employer's offer to renew the existing contract, we find that this contract is not a bar because the attempted renewal occurred after the timely filing of the present petition.²

4. The parties agree that the appropriate unit should include all production and maintenance employees of the Employer, excluding professional employees, office and clerical employees, shipping, receiving, and stock clerks, guards, and supervisors. The Petitioner would, however, include, and the Employer exclude, a group of six seasonal polishers and buffers.

These six men are regularly employed each year during the period from about September to about December as polishers and buffers. During this period, they work 5 hours a day after regular plant hours. In view of the fact that they regularly work a substantial number of hours for the Employer during a 3-month period and that this seasonal employment recurs annually, we shall include the polishers and buffers in the unit.³

We find that all production and maintenance employees at the Employer's plant at Grand Rapids, Michigan, excluding professional employees, office and clerical employees, shipping, receiving, and stock clerks, guards, 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.

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

² *Robertshaw-Fulton Controls Company*, 71 NLRB 316. The Employer further contends that the petition should be dismissed because no employee requested an election. This contention is without merit, as the petition itself is such a request.

³ *The Morrison Milling Company*, 83 NLRB 800. For the same reasons we find that these employees have sufficient interest in the conditions of employment and the outcome of the election to entitle them to vote. *Cocoline Products, Inc.*, 79 NLRB 1426, 1428.

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 the purposes of collective bargaining, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).