In the Matter of FULLER MANUFACTURING COMPANY, EMPLOYER *and* LOCAL UNION NO. 822 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. OF L., PETITIONER

Case No. 7-UA-2135.—Decided January 17, 1950

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for a union-shop authorization election duly filed, a hearing was held before Francis E. Burger, 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 Murdock].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

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

3. The Petitioner is the exclusive bargaining representative of employees of the Employer as provided in Section 9 (a) of the Act and is currently recognized by the Employer.

The Petition alleges, and we find, that more than 30 percent of the employees in the unit represented by the Petitioner desire to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit, which allegation was supported by documentary evidence submitted by the Petitioner. No question affecting commerce exists concerning the representation of employees of the Employer in the unit sought by the Petitioner. Accordingly, we find that the requirements for a union-shop authorization election, as set forth in Section 9 (e) (1) of the amended Act, have been met.

4. We find, substantially in accord with the stipulation of the parties, that all employees of the transmission division of the Employer,

at its Kalamazoo, Michigan, plant, excluding all foundry employees, guards, office and clerical employees, and supervisors, 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 Petitioner urges that they be found ineligible to vote. The Employer is unwilling to agree to this in view of the provisions of the contract between the parties, but would rather have the matter resolved by the Board.

The Employer is engaged in the business of manufacturing heavy duty truck transmissions. Due to economic conditions,[1] the Employer's payroll has declined from approximately 638 employees on June 1, 1948, to approximately 265 employees on August 1, 1949. Under the terms of a contract between the Employer and the Petitioner, all laid-off employees are carried indefinitely on a seniority list maintained by the Employer.[2]

The Employer contends that, under the contract, the laid-off employees have a definite interest in employment with the Employer. The Petitioner, on the other hand, contends that the laid-off employees have no reasonable expectancy at this time of being recalled to work and should therefore not be permitted to vote.

It appears from the record that the Employer has two types of layoffs: temporary and permanent or indefinite. A temporary layoff is one where the employee is advised to report at a specific time in the future; a permanent or indefinite layoff is one where, at the time of the layoff, the employee is not advised as to when he will be recalled.[3] The Employer's witnesses stated that all employees presently laid off come within the category of permanent or indefinite layoffs, but it was their opinion that conditions will improve by June 1950, thus bringing production back to about 75 or 80 percent of normal.[4] How-

[1] In a letter to its employees, dated May 23, 1949, the Employer explained that "Many changes have occurred since we entered 1949. Sales of trucks have fallen off drastically, and several lines of industrial equipment such as logging and material handling have also slowed down. Practically all our customers have cut back on their orders and schedules to us. Customers are also reducing their stock of materials (inventories) to match their lowered rate of production. This means further schedule reductions to us until their excess stocks are used up."

[2] The contract provides for seniority for all employees within a department, and that when a department is substantially reduced, necessitating indefinite layoffs, such employees shall thereupon gain plant seniority and be transferred to other departments, if they are qualified to perform the jobs available there.

[3] For example, when employees are temporarily laid off, their group life and hospitalization insurance remains in force; however, when an employee is permanently laid off, his insurance is terminated. Furthermore, temporarily laid-off employees are not entitled to plant-wide seniority, but those that are permanently laid off are entitled to such seniority.

[4] The Employer had originally anticipated sales to some of its customers of a new type torque converter in the fall of 1949, but work on that project was completely stopped in September 1949. There was testimony of its resumption in the spring of 1950, but in view of the past experience, it could not be predicated with any measure of certainty.

ever, the Employer was unable to state with any degree of certainty that the hoped-for improvement in economic circumstances would in fact materialize. When asked by representatives of the Petitioner as to *when* the laid-off individuals might be recalled, the Employer advised them that it could make no promises or commitments but that their recall depended entirely on business conditions.[5]

The Board has held that the pertinent issue in determining eligibility is whether laid-off employees have a reasonable expectancy of reemployment with the Employer in the near future.[6] On the basis of the entire record, we are persuaded that the prospect of recall in the near future of these particular laid-off employees is highly speculative. Under the circumstances, their layoffs, for eligibility purposes, must be deemed permanent.[7] 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 payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll 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 Local Union No. 882 of the International Union, United Automobile Workers of America, A. F. of L., to make an agreement with Fuller Manufacturing Company requiring membership in the aforesaid labor organization as a condition of employment in such unit.

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[5] Thus, the manager of the transmission division testified that "it is anybody's guess as to how long the present recession will last."

[6] *Lima Hamilton Corporation*, 87 NLRB 65; *U. S. Rubber Company, Milan Plant (Footwear Division)*, 86 NLRB 338.

[7] *F. C. Mason Company*, 86 NLRB 71; *Martin J. Barry, Inc.*, 83 NLRB 1146.