

In the Matter of COLUMBIAN CARBON COMPANY, EMPLOYER *and* J. I. SHORTER, PETITIONER *and* OIL WORKERS INTERNATIONAL UNION, CIO, AND ITS LOCAL No. 603, UNION

Case No. 9-RD-58.—Decided February 27, 1950

DECISION
AND
DIRECTION OF ELECTION

Upon a decertification petition duly filed, a hearing was held before Seymour Goldstein, hearing officer of the National Labor Relations Board. 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 Petitioner, representing employees of the Employer, asserts that the Union is no longer the representative of the employees of the Employer, as defined by Section 9 (a) of the amended Act.

The Union is a labor organization certified by the Board on August 25, 1948, as bargaining representative of the employees involved herein.¹

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.²

4. We find, substantially in accord with the stipulation of the parties, that all production and maintenance employees, well drillers, tool dressers, truck drivers and their helpers, tractor operators, welders,

¹ *Columbian Carbon Company*, 9-RC-188 (unpublished).

² We find no merit in the Union's contention that its contract with the Employer, effective until January 31, 1950, but containing an automatic annual renewal clause in the absence of 60 days' notice by either party, is a bar to the present proceeding. The Employer gave timely and proper notice to terminate the contract on November 26, 1949.

apprentice welders, and construction employees who have worked 1,000 or more hours in the 12-month period immediately preceding the date of the election hereinafter directed or who have worked 1,000 or more hours during the 12-month period ending January 31, 1950, but excluding clericals, professional employees, guards, watchmen, and supervisors within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.³

5. The record discloses that there are approximately 20 employees presently laid off. The Union contends that these employees are eligible to vote in the election. The Petitioner and the Employer take no position as to their eligibility.

In accordance with the terms of the collective bargaining agreement, the Employer maintains a "recall list" of all employees laid off. The names of the laid-off employees are retained on the recall list for a period of 180 days. If not recalled within that time, a laid-off employee's name is dropped from the recall list. In the event an employee is recalled after his name has been dropped from the recall list, he is hired as a new employee.

The employees in question were laid off in July and August 1949. The Employer does not anticipate recalling any of these employees in the immediate future. As the prospect of recalling the laid-off employees is extremely speculative, we deem their layoffs to be permanent for eligibility purposes and we therefore find them ineligible to participate in the election hereinafter directed.⁴

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 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

³ The unit herein found appropriate is coextensive with the unit which the Board found appropriate in the earlier proceeding.

⁴ *Fuller Manufacturing Company*, 88 NLRB 165.

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 Oil Workers International Union, CIO, and its Local No. 603.⁵

⁵ We shall place the name of the Union on the ballot, although it has not complied with the filing requirements of the Act. If it wins the election, it will be certified only if it is then in compliance with Section 9 (f) and (h) of the Act; otherwise the Board will only certify the arithmetical results of the election. See *The Univis Lens Company*, 83 NLRB 1261.