

In the Matter of ALLEN B. DUMONT LABORATORIES, INC., EMPLOYER
and LOCAL 303, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-
CRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-
CIO), PETITIONER

Case No. 2-RC-1589.—Decided March 20, 1950

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held in this case on November 28, 1949, at New York City, before Merton C. Bernstein, hearing officer. Thereafter, on January 20, 1950, the Board ordered the record reopened, and a further hearing was held at the same place on February 13, 1950, before Bernard L. Balicer, hearing officer. The rulings of the hearing officers made at the hearings, except as noted in paragraph numbered 3 below, 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 Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. The question concerning representation:

At the first hearing, the Employer, seeking to have the Petitioner disqualified as a collective bargaining representative, attempted to prove that Theodore Wos, an alleged supervisor, had actively participated in the Petitioner's organizational efforts at the Employer's plants and had solicited membership and application cards for the Petitioner. The hearing officer sustained objections to this line of inquiry. The Board ordered the record reopened for the receipt of such evidence.¹ The record at the second hearing shows that Wos was a member of an organizing committee for the Petitioner and had served as acting president of the Petitioner for several weeks before October 3, 1949. There is no evidence in the record that Wos ever

¹ See *The Toledo Stamping & Manufacturing Company*, 55 NLRB 865; *Robbins Tire & Rubber Co., Inc.*, 72 NLRB 157. For reasons stated in his dissenting opinion in the *Robbins* case, Mr. Houston noted his dissent from the Board's order reopening the record.

solicited membership or application cards for the Petitioner. On October 3, 1949, *Wos* resigned from the Petitioner because, according to the Petitioner's version of the facts, he had just been promoted to a supervisory position.² The Employer contends that *Wos* had been a supervisor since the early part of 1949. We are unable to determine from the record the exact date on which *Wos* became a supervisor. We believe there is at least a substantial doubt as to whether *Wos* was a supervisor at the time of his participation in the affairs of the Petitioner. Moreover, assuming, *arguendo*, that *Wos* was a supervisor at that time, we do not believe that fact to be sufficient to bar the Petitioner from an election or to interfere with the employees' choice in an election at this time in 1950. Under all the circumstances, we find, contrary to the contention of the Employer, that the Petitioner is not tainted by management support and is capable of serving as the collective bargaining representative of the employees involved herein.³

We find that 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 appropriate unit:

The Employer operates six closely integrated plants in the vicinity of Passaic, Clifton, and East Paterson, New Jersey, where it is engaged in the manufacture of television sets, electronic instruments, and allied products. The parties are in agreement that the appropriate unit should consist of all production and maintenance employees at these plants, excluding office, clerical, confidential, and professional employees, and supervisors as defined in the Act. However, the Employer contends, contrary to the position of the Petitioner, that certain watchmen are not guards within the meaning of Section 9 (b) (3) of the Act⁴ and should be included in the unit.

At each of the Employer's plants there are three shifts of employees classified as watchmen. On all shifts at the East Paterson plant and on two of the shifts at another plant, the watchmen are supplied to the Employer by the Burns Detective Agency, an independent contrac-

² The record is clear that *Wos* took no part in the affairs of the petitioner after October 3, 1949.

³ Mere membership in a petitioning union (*California Packing Company*, 59 NLRB 941) or the holding of office therein (*Charlottesville Woolen Mills*, 59 NLRB 1160) is not sufficient to warrant dismissal of the petition. See also *Jackson Daily News*, 86 NLRB 729. *Alaska Salmon Industry, Inc.*, 78 NLRB 185, relied upon by the Employer in its supplemental brief, is distinguishable. In that case the Board dismissed the petition because a number of supervisors were responsible for the formation of the petitioner, served as officers of the petitioner, and had openly solicited membership in the petitioner.

⁴ This section provides that the Board shall not decide that any unit is appropriate ". . . if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises . . ."

tor. Although these watchmen are not employees of the Employer, they do the same work as the other watchmen. Each plant is enclosed by a fence, and the watchmen are stationed at the main entrances. Their principal function is to check employees' identification badges and to prevent unauthorized persons from entering or leaving the plants. The Employer's rules require that employees have special authorization to leave the plants during working hours or to carry packages out of the plants; the watchmen enforce these rules. All first shift watchmen wear uniforms furnished by the Employer. Watchmen on duty at times when production shifts are not working make regular rounds of the plants to check on fires and the presence of unauthorized persons.

We are of the opinion that employees classified as watchmen at each of the Employer's plants are guards within the meaning of the Act, and we shall exclude them from the unit.⁵

We find that all production and maintenance employees of the Employer at its plants in Passaic, Clifton, and East Paterson, New Jersey, excluding office, clerical, confidential, and professional employees, guards,⁶ and supervisors⁷ 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.

5. The determination of representatives:

At the first hearing, the Employer contended that its operations were expanding and that no election should be directed at this time. The record discloses that the Employer now has approximately 1,600 employees in its various plants, but expects to increase production. However, as the Employer cannot predict with any reasonable accuracy when or how many new employees will be employed, and as the present job classifications are completely representative of any prospective employment peak, we find that an election may properly be held at this time.⁸

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

⁵ *Mac Smith Garment Company, Inc.*, 83 NLRB 780; *Owens-Illinois Glass Company*, 82 NLRB 205; *The Clark Thread Company*, 79 NLRB 542.

⁶ Excluded under this category are all employees classified as watchmen.

⁷ The parties agreed, and we find, that all employees classified as group leaders are not supervisors and are included in the unit.

⁸ *Western Electric Company, Inc.*, 84 NLRB 552; *General Motors Corporation, etc.*, 82 NLRB 876.

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 be represented, for purposes of collective bargaining, by Local 303, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

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