In the Matter of C. T. YOUNG D/B/A YOUNG MANUFACTURING COMPANY, EMPLOYER *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, PETITIONER

Case No. 9–RC–934.—Decided November 30, 1950

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lloyd R. Fraker, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds 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]

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.

4. All production and maintenance employees of the Employer at its Beaver Dam, Kentucky, mill, including truck drivers, but excluding office and professional employees, guards, and all supervisors within the meaning of the Act,[3] constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[1] The Employer's motion to dismiss the petition on the grounds that his business (1) is seasonal, (2) has a proportionately large personnel turnover, and (3) is too small to justify the Board's assertion of jurisdiction, was referred to the Board. For reasons hereinafter stated, the motion is denied.

[2] The Employer is an individual engaged in the manufacture of rough lumber into building products. During the year 1949, the Employer's total sales of finished products were in excess of $55,000, of which $49,500 were to customers outside the State of Kentucky. We find that it will effectuate the policies of the Act to assert jurisdiction in this case. *Stanislaus Implement and Hardware Company, Limited,* 91 NLRB 618.

[3] The secretary-bookkeeper is excluded as an office employee. The work leader and dry kiln employee are included as they possess no supervisory authority.

5. The determination of representatives:

The Employer's manufacturing operations fluctuate following the activity in the building trades, with a generally higher volume of work during April, May, June, August, September, and part of October. During August the Employer had 15 employees within the proposed unit, and in mid-October there were 9, 6 of whom are permanent year-round employees. Employees who are laid off during the slower months are customarily recalled when the work load warrants such action, before the Employer hires new employees.[4] The Petitioner desires an immediate election and contends that employees temporarily laid off are eligible to vote in such election. The Employer, on the other hand, urges that if an election is held, those temporarily laid-off employees who have accepted employment elsewhere should not be permitted to vote.

The Board has customarily regarded temporarily laid-off employees who have not obtained permanent employment elsewhere or have not failed to respond to an offer of reemployment by the Employer, as eligible to vote.[5] However, as the evidence in this case is insufficient to enable us to make a definitive finding at this time as to the employment status of these individuals, we shall make no final determination with respect to the eligibility issue but shall permit them to vote subject to challenge.[6] As the present personnel complement constitutes a representative and substantial group,[7] we shall, in accordance with our usual policy, direct an immediate election.

[Text of Direction of Election omitted from publication in this volume.]

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[4] In addition, the Employer follows the practice of laying employees off during intermittent slack periods and recalling them in a few days or weeks, when work is available. This results in a large percentage turnover of employees. The Employer urges that because of this large turnover the petition should be dismissed. We find no merit to this contention. The Board has previously held that a considerable turnover among employees does not impair the representative nature of the balloting, and to void an election because of a substantial change in constituency of the unit would be tantamount to holding that benefits of the Act would no longer be available to employees in industries having high turnover. See *Pacific Tankers, Inc.*, 84 NLRB 965, and cases cited therein.

[5] *Scott-Atwater Manufacturing Company, Inc.*, 90 NLRB No. 9; *American Transformer Company*, 89 NLRB 824.

[6] *Mathews Lumber Company*, 89 NLRB 50; *Auto-Lite Battery Corporation*, 85 NLRB 1034.

[7] See *The Borden Company, Hutchinson Ice Cream Division*, 89 NLRB 227; *Foremost Dairies, Inc.*, 86 NLRB 585; *Arkport Dairies, Inc.*, 86 NLRB 319. Cf. *Bob Tankersley Produce Company*, 89 NLRB 974, where in a truly seasonal industry only the office manager remains during the off-season.