In the Matter of LLOYD A. FRY ROOFING COMPANY AND VOLNEY FELT MILLS, INC., EMPLOYERS *and* INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE, AND PAPER MILL WORKERS, A. F. OF L., PETITIONER

Case No. 34-RC-203.—Decided January 3, 1951

DECISION AND DIRECTION OF ELECTION

Upon an amended petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Miles J. McCormick, 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 [Members, Houston, Reynolds, and Styles].

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

1. The Employers are jointly and severally engaged in commerce within the meaning of the Act.[2]

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

3. A question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

[1] The hearing officer referred to the Board motions to dismiss, severally filed by the Employers. The motions are denied. The contention that the petition should be dismissed because there is no contention that the employees of Fry wish to be included in a unit with those of Volney, is without merit. Under Section 9 (b) of the Act, the Board, and not the parties, decides the scope of the unit appropriate for bargaining. Nor is there any merit to the contention that the petition should be dismissed because of Section 9 (c) (5) of the Act. The extent to which the employees have been organized, has not been relied on in determining the appropriate unit. See paragraph numbered 4, below. We further find no merit in the Employer's contentions relating to the Petitioner's showing of interest. A labor organization's showing of interest is an administrative matter for the determination of the Board, and is not subject to collateral attack by the parties. *Penick & Ford, Ltd., Inc.,* 86 NLRB 659; *Stokely Foods, Inc.,* 78 NLRB 842. Moreover, we are satisfied that the Petitioner has made an adequate showing in this proceeding.

[2] The two Employers operate plants in several other States of the Union. Some of these plants are located on the same site, and others are located 100 to 200 miles apart. The only plants involved in this proceeding are their two plants at Morehead City, North Carolina. *Lloyd A. Fry Roofing Company, et al.,* 89 NLRB 854; *The Borden Company, Southern Division,* 91 NLRB 628.

In the earlier proceeding involving Fry and Volney, *supra,* it was stipulated that Volney was a subsidiary of Fry. The record does not indicate any change in the relationship of the Employers, but a similar stipulation was refused in the instant case, the representatives of the Employers in this proceeding disclaiming any knowledge of relationship between Fry and Volney.

4. The Petitioner seeks a single unit comprising all production and maintenance employees of the Employers at Morehead City, North Carolina, excluding office and clerical employees, watchmen, foremen and tour bosses, and all other supervisors. While in substantial agreement as to the composition of the unit, the Employers contend, in effect, that only separate units of the employees of each Employer are appropriate. There has been no history of collective bargaining with respect to the employees concerned.

The unit sought by the Petitioner embraces the production and maintenance employees of Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., herein collectively called the Employers and separately called Fry and Volney, respectively. Volney is engaged in the manufacture of roofing felt, a necessary ingredient in the manufacture of felt roofing material, in which Fry is engaged. The corporations operate plants in separate buildings about 200 feet apart and connected by an enclosed ramp which affords communication between them. The operations of the local plants are under the control of a single manager and assistant manager. One office manager likewise is in charge of the office work which is necessary for both corporations. Each plant has a separate superintendent who has under him a foreman or "tour boss" for each shift. A watchman on the Fry payroll guards both plants. At present the Morehead City operations of Fry use approximately 60 percent of the output of the Volney plant. The other 40 percent is shipped to other Fry plants in other States. The roofing felt, produced by Volney, is put in Volney's warehouse, located on Volney's premises. Fry requisitions this felt and treats it with asphalt and gravel. The result is roofing material which is sold by Fry in the trade.

The 40 employees of Volney and the 60 employees of Fry are hourly paid. They presently use separate entrances,[3] punch separate time clocks, and are kept on separate payrolls. The processes required for each plant operation are different and there is no interchange of production employees between the plants. Maintenance employees, however, do repair work in both plants. Employees of each plant are hired by the superintendent of that plant with the approval of the manager or assistant manager of the joint operations. Each plant has a machine shop for maintenance, but if Fry has work requiring a lathe, that work is done in the Volney plant, and the cost is charged to Fry.

On the same properties with the Volney and Fry plants is the plant of Trumbell Asphalt Company, herein called Trumbell, which supplies Fry with the asphalt used in treating the felt which is supplied

[3] At the time of the hearing, a fence was being erected around the premises which would require all employees of both corporations to use the same entrance.

by Volney in the preparation of Fry's finished product.[4] The record reveals no connection between Trumbell and either Volney or Fry, and neither the Petitioner nor the Employers contend that employees of Trumbell should be included in the appropriate unit.

The Employers, alleging that different skills are required in the operation of the roofing plant and the felt plant, contend that two separate units for the employees of each plant should be established. The Petitioner, on the other hand, urges the single unit, pointing out the fact that the two plants are under the same management and control, and that the operations of one are merely a continuation of the operations of the other. Although the Employers assert that Volney employees possess different or superior skills, it does not appear that the distinction in the skills required as between the two plants is any different than would normally be found as between two departments of a single plant producing different components of a single product. The final authority to hire and discharge employees of both Employers is vested in the manager and assistant manager of the entire operation, and employees of both Employers receive comparable wages and are subject to similar hours of employment and other conditions of employment.[5]

Under the circumstances, including the substantial identity of control, the integrated operations, and the common determination of labor policies, we are of the opinion that Fry and Volney together constitute a single employer within the meaning of Section 2 (2) of the Act, and that their employees at Morehead City, North Carolina, comprise a single unit appropriate for purposes of collective bargaining.[6]

Accordingly, we find that all production and maintenance employees of Fry and Volney at their Morehead City, North Carolina, roofing and felt plants, excluding office and clerical employees, watchmen,[7] foremen and tour bosses,[8] and all other supervisors, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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

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[4] The three plants on these properties now operated by Fry, Volney, and Trumbell were formerly operated by Madix Asphalt Roofing Corporation. See Case No. 34–CA–76.

[5] Employees of both Volney and Fry enjoy the same vacation plan on a Nation-wide basis.

[6] *South Georgia Pecan Shelling Company, et al.*, 85 NLRB 591; cf. *American Relays and Controls, Inc.*, 81 NLRB 178; and *Orleans Materials & Equipment Co., Incorporated*, 76 NLRB 351.

[7] As noted above, a watchman, listed on the Fry payroll, protects the property of both plants. He has no janitorial duties and is clearly employed as a guard within the meaning of the Act. *C. V. Hill and Company, Inc.*, 76 NLRB 158; *Wiley Mfg. Inc.*, 92 NLRB 40.

[8] Foremen at the Fry roofing plant and tour bosses at the Volney felt plant may effectively recommend the hire and discharge of employees under them.