

In the Matter of GENERAL MOTORS CORPORATION (FRIGIDAIRE DIVISION,
NEWARK ZONE SHOP), EMPLOYER and UNITED ELECTRICAL, RADIO
& MACHINE WORKERS OF AMERICA, LOCAL 1227 and UNITED ELEC-
TRICAL, RADIO & MACHINE WORKERS OF AMERICA, PETITIONER

Case No. 2-UA-5754.—Decided January 30, 1951

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Lloyd S. Greenidge, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer requested oral argument. As the record and the brief filed herein, in our opinion, adequately present the issues and the positions of the parties, the request is hereby denied.

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

2. The Petitioner is the exclusive bargaining representative of the employees of the Employer in the appropriate unit, as provided in Section 9 (a) of the Act.

3. The Petitioner alleges, and we find, that more than 30 percent of the employees in the unit represented by the Petitioner desire to authorize the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit. As the Employer currently recognizes the Petitioner, no question affecting commerce exists concerning the representation of employees of the Employer in the unit sought by the Petitioner. We find, therefore, that the preliminary requirements for a union-shop authorization election, set forth in Section 9 (e) (1) of the Act, have been met.

4. The appropriate unit:

We find, in accord with the stipulation of the parties, that all production and maintenance employees of the Employer's Newark Zone Shop, including shipping and service employees and porters, but excluding office and clerical employees, field service men, field unit replacement men, dealer contacting men, service salesmen, freight

elevator operators, professional employees, executives, watchmen, and supervisors as defined in the Act 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 Employer contends that they should be found eligible to vote. The Petitioner, on the other hand, urges that they be excluded.

The Employer, an unincorporated division of the General Motors Corporation, is located in Newark, New Jersey, and is engaged in the reprocessing and repairing of refrigerator equipment. As a result of a decrease in business, the Employer has reduced its working force from 46 employees on January 13, 1950, to a stabilized force of 26 employees at the time of the hearing on October 13, 1950. There is no present prospect that any of these employees will be recalled at any fixed date in the future.

Under the terms of a collective bargaining contract between the Employer and the Petitioner entered into August 23, 1950, all laid-off employees are carried on a seniority list for at least 12 months, and thereafter for a period equal to their prior active employment but not more than 5 years. Both parties agree that the laid-off employees herein involved are employees under seniority provisions of the contract.

The Employer contends that as all the laid-off employees are presently entitled to be reemployed in order of seniority under the contract, they should be considered as only temporarily laid off, and therefore eligible to vote. The Board has held that the mere fact that laid-off employees have contractual seniority rights does not entitle them to vote.¹ The voting eligibility of laid-off employees depends rather on whether they have a reasonable expectation of re-employment in the near future.² The record shows that the employees under consideration have no such expectancy of recall.

We find, therefore, that as there is no reasonable prospect of re-employment of the employees in question, their layoffs for eligibility purposes must be considered permanent, and they are ineligible to participate in the election.

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

¹ *Lima Hamilton Corporation*, 87 NLRB 455. Cf. *Servel, Inc.*, 65 NLRB 1067; *Hubbard and Company*, 45 NLRB 1. These and other cases cited by the Employer have been overruled by *Lima Hamilton Corporation* to the extent that they are inconsistent with that decision.

² *U. S. Rubber Company*, 86 NLRB 338. *Lima Hamilton Corporation*, *supra*.