In the Matter of ACME BOOT MANUFACTURING COMPANY, INC., EMPLOYER *and* CREIGHTON NEAL, PETITIONER

Case No. 10–RD–12.—Decided February 27, 1948

Mr. Joseph Martin, of Nashville, Tenn., and *Mr. Sidney Cohn*, of Clarksville, Tenn., for the Employer.

Goodlett & Goodlett, by *Mr. Collier Goodlett*, of Clarksville, Tenn., for the Petitioner.

Mr. F. N. Dickenson, of Memphis, Tenn., for the Union.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held at Clarksville, Tennessee, on December 8, 1947, before Frank H. Stout, hearing officer.[1] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the hearing the Union moved to dismiss the petition on various grounds. For the reasons hereinafter stated, the motion is hereby denied. The Union's request for oral argument is denied inasmuch as the record, in our opinion, adequately presents the issues and positions of the parties.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Acme Boot Manufacturing Company, Inc., a Tennessee corporation, is engaged in the manufacture of leather cowboy boots at its plant in Clarksville, Tennessee. During the past year the Employer purchased raw materials, consisting principally of leather, valued in excess of $1,000,000, of which more than 90 percent orig-

[1] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Reynolds, and Gray].

inated outside the State of Tennessee. During this same period the Employer sold finished products valued in excess of $1,000,000, of which approximately 90 percent was shipped to points outside the State of Tennessee.

The Employer admits and we find that it is engaged in commerce within the meaning of the Act.

II. THE PARTIES INVOLVED [2]

The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative of the Employer's employees as defined in Section 9 (a) of the Act.

United Rubber, Cork, Linoleum & Plastic Workers of America, herein called the Union, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

On September 5, 1946, the Union was certified as the bargaining representative of employees of the Employer.[3] Thereafter, the parties executed a collective bargaining contract which expired on November 30, 1947.

On September 30, 1947, the Petitioner, by letter, notified the Employer that it represented a majority of employees at the plant, and requested an election to determine whether the Union should be "decertified" as the bargaining representative of the Employer's employees. The Employer apparently made no reply to this letter. Thereafter, on October 13, 1947, the Petitioner filed the petition in this proceeding.

At the hearing the Union moved to dismiss the petition on the ground that its certification of September 5, 1946, constitutes a bar to a present election. In support of its position, the Union urges that the Board in its recent decision in the *Reed Roller Bit* case [4] established a policy guaranteeing certifications for a period of 2 years. We do not agree. The Board held in that case that, in the interests of promoting stability of industrial relations, it would not interfere with bargaining relations secured by collective bargaining agreements of 2 years' duration. In the instant case no such contract exists. Accordingly, we find no merit in this contention.

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[2] The Union moved to dismiss the petition on the ground that the Petitioner had failed to comply with Section 9 (f) and (h) of the Act. Inasmuch as the provisions relating to compliance under Section 9 (f) and (h) of the Act are clearly applicable only to labor organizations, we find no merit in the Union's contention.

[3] 70 N. L. R. B. 1199.

[4] *Matter of Reed Roller Bit Company*, 72 N. L. R. B. 927.

Arguing that more than 10 days had elapsed between the Petitioner's notice to the Employer and the filing of the petition in this proceeding, the Union urges further, that the petition herein should be dismissed under the doctrine enunciated in the *General Electric X-Ray* case.[5] But unlike the facts in that case, no collective bargaining agreement was executed in this interval. We, therefore, find no merit in this contention.

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.

IV. THE APPROPRIATE UNIT

We find, substantially in accordance with the agreement of the parties at the hearing, that all production and maintenance employees of the Employer, excluding office and clerical employees, sales employees, guards, professional employees, and all supervisors, 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.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Acme Boot Manufacturing Company, Inc., of Clarksville, Tennessee, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll 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 who 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 by United Rubber, Cork, Linoleum & Plastic Workers of America, CIO, for the purposes of collective bargaining.

[5] *Matter of General Electric X-Ray Corporation*, 67 N. L. R. B. 997.