

In the Matter of SOLAR ELECTRIC CORPORATION, EMPLOYER and AGNES  
I. FLASHER, PETITIONER

*Case No. 6-RD-2.—Decided April 29, 1948*

*Mr. Charles C. Hewitt*, of Pittsburgh, Pa., for the Employer.  
*Miss Agnes I. Flasher*, of Warren, Pa., the Petitioner.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held at Warren, Pennsylvania, on January 15, 1948, before W. G. Stuart Sherman, hearing officer.<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Solar Electric Corporation is a Delaware corporation engaged at Warren, Pennsylvania, in the manufacture, sale, and distribution of incandescent light bulbs. During the period from March 1 to September 1, 1947, the Employer purchased raw materials valued in excess of \$160,000, of which approximately 50 percent was obtained from sources outside the Commonwealth of Pennsylvania. During the same period, the Employer sold manufactured products valued in excess of \$400,000, of which approximately 95 percent was shipped to points outside the Commonwealth of Pennsylvania.

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

II. THE PARTIES INVOLVED

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.

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<sup>1</sup> 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 Chairman Herzog and Board Members Reynolds and Murdock.

The Union,<sup>2</sup> a labor organization affiliated with the Congress of Industrial Organizations, was established on January 9, 1946, in Case No. 6-R-1300, as exclusive bargaining representative of the Employer's employees as a result of a consent election.

### III. THE QUESTION CONCERNING REPRESENTATION

On January 9, 1946, following the consent election noted above, the Union became the exclusive bargaining representative of the Employer's production and maintenance workers. On May 27, 1946, the Employer executed a collective bargaining agreement with the Union for the term of 1 year. The termination date of the agreement was subsequently extended to August 26, 1947. On or about November 15, 1947, nearly 3 months after the expiration of the aforesaid agreement, the Petitioner on behalf of herself and 35 other employees advised the Employer that the employees no longer wished the Union to represent them for the purposes of collective bargaining. On November 24, 1947, the Petitioner filed the instant petition.

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) (7) of the Act.

### IV. THE APPROPRIATE UNIT

We find that all production and maintenance employees of the Employer, excluding executives, monitors, engineers, technicians, draftsmen, designers, office and clerical employees, and all supervisors, guards, professional employees as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>3</sup>

### V. THE DETERMINATION OF REPRESENTATIVES

On September 3, 1947, the Employer's employees went out on strike. From that time until the date of the hearing, the plant has been picketed. Operations at the plant were resumed shortly after January 1, 1948. Although there were 83 employees in the unit when the strike occurred, at time of the hearing there were only 47 employees, including 18 new employees who, the Employer contends, have replaced strikers. The Employer takes the position that the strikers who have not returned to work should not be deemed eligible to vote in the election, because it now has a full complement of employees and under

<sup>2</sup> Although Union representatives were present, they did not participate in the hearing.

<sup>3</sup> This is virtually the unit for which the Union was certified as bargaining representative. The description has been changed slightly to conform with the provisions of the amended Act.

present business conditions, it does not anticipate hiring any more employees.

For reasons indicated in an earlier case,<sup>4</sup> we shall direct an immediate election, permitting all employees to participate who were employed during the pay-roll period immediately preceding the date of this Direction. All persons hired since September 3, 1947, the date of the strike, and all strikers shall be deemed presumptively eligible to vote, subject to challenge.<sup>5</sup> The challenged ballots shall not be counted unless they affect the result of the election, in which case the question as to which of these ballots shall be opened and counted will await a further investigation concerning the employment status of the affected individuals.

In the election which we shall direct, we shall place the name of the Union on the ballot, although it has not complied with the registration and filing requirements of the Act, as amended. Under our policy, the Union would be certified if it wins the election, *provided* that at the time it is in compliance with Section 9 (f) and (h) of the Act. Absent such compliance, the Board will only certify the arithmetical results of the election.<sup>6</sup>

#### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Solar Electric Corporation, Warren, Pennsylvania, 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 Sixth Region, subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, and to our determination in Section V, *supra*, 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 were on strike at that time

<sup>4</sup> *Matter of Pipe Machinery Company*, 76 N. L. R. B. 247

<sup>5</sup> Nothing in this Direction should be construed as indicating that the Board has prejudged in any respect any of the questions which may be drawn into issue by a challenge to the eligibility of certain voters, including such questions as whether (1) a new employee is a permanent replacement, (2) a striking employee has been validly replaced, or (3) any employee's position no longer exists by reason of its permanent discontinuance for economic reasons. *Matter of Longhorn Roofing Products, Inc.*, 67 N. L. R. B. 84; *Matter of The Pipe Machinery Company*, 76 N. L. R. B. 247

<sup>6</sup> *Matter of Harris Foundry & Machine Company*, 76 N. L. R. B. 118

and 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 have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Electrical, Radio and Machine Workers of America, Local 633, for purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.