

In the Matter of ACE NOVELTY MANUFACTURING COMPANY, EMPLOYER
and TEXTILE WORKERS UNION OF AMERICA, CIO, PETITIONER

Case No. 21-RC-145.—Decided May 25, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent employees of the Employer.

3. A question of representation 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. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production employees including the shipping and receiving clerk,¹ but excluding clerical employees, guards, professional employees, and supervisors as defined in the Act.

5. Since February 17, 1948, an economic strike called by the Petitioner has been in progress, although the plant has continued to operate. The Petitioner requested that eligibility to vote be limited to employees on the pay roll during the week of February 15, 1948. The Employer requests use of the pay roll immediately preceding

* Houston, Reynolds, and Gray.

¹The fact that the shipping and receiving clerk is related to a supervisor who is a brother-in-law of the Employer is not deemed sufficient reason for excluding him from the unit

the Direction of Election, which is the customary Board eligibility date.

In accordance with previous holdings, 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 February 17, 1948, the date of the strike, and all strikers shall be presumptively eligible to vote, subject to challenge. 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.²

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, 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 Region in which this case was heard, 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 paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees on strike, 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, for purposes of collective bargaining, by Textile Workers Union of America, CIO.

² *Matter of Pipe Machinery Company*, 76 N. L. R. B. 247; *Matter of Colonial Hardwood Flooring Co., Inc.*, 76 N. L. R. B. 1039.