

OLIVER IRON AND STEEL CORPORATION, BERRY DIVISION *and* LODGE No. 1189, INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L., PETITIONER.¹ *Case No. 32-RC-413. April 7, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel. [Members Houston, Murdock, 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 labor organization involved claims to represent certain employees of the Employer.

3. 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.

4. The Petitioner seeks a unit of all production and maintenance employees at the Employer's Berry Division in Corinth, Mississippi, including inspectors and watchmen, but excluding all clerical and office employees, professional and technical employees, the chief inspector, and all supervisors as defined in the Act. The Employer would exclude inspectors and watchmen.

The inspectors are under the supervision of the chief inspector, and use testing and gauging equipment in inspecting parts that go into the Employer's product. They make reports as to their findings which furnish the basis for an investigation by a quality control group or those directly in charge of the employees concerned. Although inspectors can make recommendations as to the status of employees, there is nothing in the record indicating that these recommendations are effective. Moreover, it is clear that the inspectors make no assignments, do not discipline employees, and have no control over them. As they do not appear to have supervisory powers and as their interests are closely allied to those of the production employees, we shall include the inspectors in the unit.²

The watchmen, one for each of the Employer's three shifts, are armed and patrol the plant to protect plant property and to check for fire in accordance with insurance requirements. Only 10 to 15 percent

¹ The names of the Employer and the Petitioner appear as amended at the hearing.

² *Kennecott Copper Company*, 92 NLRB 1786; *Wm. P. McDonald Corporation*, 83 NLRB 427.

of their time is spent in cleaning and sweeping work. In the event of an expansion of plant personnel, it is planned that the watchmen will be deputized, wear uniforms, and guard entrances and exits of the plant. We find on the basis of their present duties, and regardless of possible additional duties at a later time, that the watchmen are guards within the meaning of the Act.³ We shall therefore exclude them from the unit.

We find that the following employees of the Employer at its Berry Division in Corinth, Mississippi, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees including inspectors, but excluding all clerical and office employees, professional and technical employees, the chief inspector, watchmen, and all supervisors as defined in the Act.

5. The Employer contends that the petition is premature and should be dismissed because of a contemplated expansion in the size of the unit. It asserts that the present unit does not constitute a substantial and representative complement of the working force which will eventually be employed. The Petitioner takes the contrary position that any increase in employment is speculative in nature and that the present force is adequate and representative.

The Berry Division involved herein was acquired by the Employer in July 1951, after the former experienced financial difficulties that slowed down its program of engineering and testing hydraulic pumps and motors in preparation for full production. Despite an outlay of about \$500,000 additional since that time, the accelerated research program has not yet resulted in a satisfactory solution of the Berry Division's major manufacturing problem, namely, the development of techniques and equipment to permit boring within extremely close tolerances. Although the Employer's works manager stated that such a solution was "imminent," it is evident from the record that there is considerable doubt and uncertainty as to when these technical difficulties will, in fact, be overcome. Thus, for example, it was indicated that it is "highly problematical" that present equipment would be adequate and it appeared that special machines for which the basic materials had not yet been purchased would have to be devised in order to achieve the desired tolerances.

The Employer is also interested in developing a new package type automatic transmission for which initial funds have been granted by the Employer's board of directors. However, the record shows that this transmission will not be on the production line for some time as it cannot be made on present equipment and will require

³ *Union Asbestos and Rubber Company*, 86 NLRB 321; *Marshall Manufacturing & Processing Company*, 82 NLRB 959.

building new models which, in turn, call for new and different classifications of employees. A further problem confronting the Employer is the dearth of skilled labor in the surrounding area which is largely agricultural. As a consequence, the Employer is arranging "the preliminary aspects" of an adult training program with local officials to supplement its own on-the-job training plans.

The Berry Division's complement of 59 production and maintenance employees, who are distributed among 23 classifications, has remained substantially unchanged from July 1951 to January 21, 1952, the date of the hearing. The Employer's representative testified that this number of employees would be doubled by the end of March 1952, only if an answer was found for its principal technical problem. The Employer's anticipation that there would be 15 to 20 new classifications⁴ within 6 months likewise is dependent upon further research on tolerance problems as well as the successful development of the transmission referred to above. Similarly, the expectation that a full expansion to 350 to 400 employees with a total of 30 to 40 new classifications would be completed by the end of 1952 or the middle of 1953 is also uncertain in that it is contingent upon the Employer's ability to solve its various difficulties. While the Employer sets as its objective at the Berry Division an annual production rate of 18,000 units for 1952 as against an actual production of 2,000 units for 1951, it had on hand at the time of the hearing orders for about 800 units. And although the sales department, which had been entirely abolished, has been revived and enlarged, its efforts are confined to market research and promotion "in anticipation of getting into production."

It is clear from the foregoing that timely achievement of the Employer's proposed expansion is speculative. The record discloses that the present complement at the Berry Division is a substantial and representative segment of the employees to be employed in the coming months.⁵ Accordingly, we hereby deny the Employer's motion to dismiss the petition. Under these circumstances, we see no reason for departing from the Board's usual policy of directing an immediate election. Accordingly, we hereby deny the Employer's motion to dismiss the petition.

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

⁴ It was indicated that this number would include both newly created classifications as well as those existing classifications which will undergo marked changes in job content.

⁵ *Hollywood Maxwell Co.*, 97 NLRB 70; *R. S. Scherer Corporation, Hypospray Division*, 95 NLRB 1426.