

Street plant employees.³ Accordingly, we shall make no final unit determination at this time, but shall first ascertain the desires of these employees as expressed in the election hereinafter directed.

Employed at the Forest Avenue plant are 3 watchmen and 1 timekeeper. The parties take no position as to their inclusion in the appropriate unit, but apparently leave the problem of inclusion or exclusion to the determination of the Board. The duties performed by the watchmen include punching the clock, checking sprinklers, guarding the premises, and limited janitorial work. Since the record discloses that these employees are primarily employed as watchmen, we shall exclude them from the unit. The timekeeper, in addition to keeping time records, maintains stock records, takes inventory, performs limited maintenance work, and is carried on the factory payroll. We shall include this employee in the unit.

We shall direct an election in the voting group composed of the production and maintenance employees at the Employer's Forest Avenue plant, including the timekeeper, but excluding office clerical employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

If a majority of the employees in this voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate plant bargaining unit. If the majority select the Intervenor, they will be taken to have indicated their desire to become a part of the existing unit composed of employees at the Austin Street plant.

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

³ *General Metals Corporation*, 95 NLRB 1490; *Weyerhaeuser Timber Co.*, 78 NLRB 1267.

ACTIVE SPORTSWEAR CO., INC., *and* MARY LYONS, PETITIONER *and* LOCAL 75, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL.
Case No. 1-RD-123. February 13, 1953

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 Harold Kowal 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, a Board has delegated its powers in connection with this case to the three-member panel [Members Houston, Styles, and Peterson].

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 Union claims to represent certain employees of the Employer. The Petitioner, an employee of the Employer, asserts that the Union is no longer the bargaining representative, as defined in Section 9 (a) of the Act, of the employees involved in this matter.

3. On August 17, 1951, the Employer and the Union concluded the latest contract in a bargaining relationship which has existed at least since 1949. This agreement, like its predecessors, contained union-security provisions. It was to remain in effect for a period of 1 year, and thereafter for annual periods if no notice to terminate or modify was given at least 60 days prior to the anniversary date. The contract was automatically renewed on August 17, 1952, 9 days before the instant petition was filed.

The following are the pertinent provisions of the 1951 agreement:

THIRD: It is hereby agreed that all employees covered by this Agreement shall be and become members of the Union in good financial standing for the duration of this Agreement, as a condition of employment, except during the worker's trial period, hereinafter referred to.

FOURTH: All new employees, after a probationary period of thirty (30) days, shall become and remain members of the Union as a condition of employment and remain members of the Union in good financial standing and the Union agrees to accept such employees as members.

The foregoing provisions with reference to Union security shall at all times be subject to the provisions of the Labor-Management Relations Act, 1947, or to any other applicable Federal or State laws, and the Employer shall not be bound thereby unless there has been compliance by the Union with such applicable laws.

The union-security provision was never authorized by a union-shop election during the period when such elections were necessary. Furthermore, Local 75 was not in compliance with Section 9 (f), (g), and (h) when the collective-bargaining agreement was concluded, or at any time thereafter.

The Union argues that the contract is a bar to an election because the union-security provisions were effectively deferred by language in the contract. It concedes that, absent such deferral, the lack of compliance would prevent the union-security contract from being a bar.

The Board has held that, in order to effect a deferral of a union-security provision, the language of the agreement must clearly show that the union-security clause is not to be applied until its legality is established.¹ We are satisfied that the second paragraph of Article Fourth does not clearly defer the applicability of the union-security provision. The requirement that this provision shall at all times be "subject to the provisions of the Labor-Management Relations Act, . . ." does not postpone its operation until its validity is established. The Board has heretofore viewed comparable language as making the provision presently effective, but postponing the issue of legality for future determination by a proper tribunal.²

Our conclusion is not altered by the fact that this clause further provides that "the Employer shall not be bound thereby unless there has been compliance by the Union with such applicable laws." For, it is apparent that the parties considered that membership in the Union was essential to the administration of the contract, irrespective of compliance by the Union. Thus, Article Fifteenth of the contract,³ which relates to employee benefits, limits those benefits to members of the Union, and there is no provision for its deferral. Moreover, although the contract purports to be an exclusive collective-bargaining agreement, its preamble states that the Union claims to represent only "the members thereof now employed or hereafter to be employed by the Employer⁴ . . ."

Accordingly, as the union-security clause was not deferred, the Board finds that the contract is not a bar to an election and that a question of 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.⁵

4. We find, in agreement with the Petitioner, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

¹ *Sa-Mor Quality Brass, Inc.*, 93 NLRB 1225.

² *O. F. Shearer & Sons*, 93 NLRB 1228; *Sa-Mor Quality Brass, Inc.*, *supra*; *Sonotone Corporation*, 90 NLRB 1236; *Hazel-Atlas Glass Company, et al.*, 85 NLRB 1305, *Lykens Hosiery Mills, Inc.*, 82 NLRB 981.

³ "FIFTEENTH The Employer shall pay . . . to the Union . . . toward the Health, Welfare and Vacation Fund . . . for the purpose of providing its members with . . . benefits. . . ."

⁴ The Union also relies on Articles Twenty-Third and Twenty-Fourth. Article Twenty-Third is a general clause providing for modification of the agreement so as not to be in conflict with the Labor Management Relations Act, as it may be amended. This is clearly not a deferral provision. Article Twenty-Fourth is a savings clause which becomes important in the event any clause is held invalid. It, too, clearly has no bearing upon the validity of the deferral of the union-security provision.

⁵ We find it unnecessary to consider the other contentions of the Petitioner on the contract bar issue.

All employees at the Employer's Worcester, Massachusetts, plant, excluding maintenance employees, clerical employees, executives, guards, and supervisors, as defined in the Act.⁶

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

⁶This is the unit set forth in the present collective-bargaining agreement.

PACKARD-BELL COMPANY, SERVICE DIVISION *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 1222, AFL, PETITIONER. *Case No. 30-RC-846. February 13, 1953.*

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 Clyde F. Waers, 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 [Chairman Herzog and Members Styles and Peterson].

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. We find, in agreement with the parties, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees at the Employer's Denver, Colorado, service branch, excluding office and clerical employees and supervisors.

5. The Employer contends that the petition is premature and should be dismissed because of a contemplated expansion in the size of the unit. The Petitioner urges that the Employer's estimates as to the number of employees to be hired within the next year is speculative, and that a representative group of employees is now working in all classifications.

The Employer started its Denver operations in July 1952. At the time of the hearing, January 12, 1953, it had 18 employees, having hired approximately 4 each month since August 1952. The Employer