

WM. L. HOGE & Co., INCORPORATED¹ and UNITED FURNITURE WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 9-RC-1784. February 26, 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 William G. Wilkerson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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 Murdock 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

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

4. The appropriate unit:

The parties agree as to the appropriateness of a unit of all production and maintenance employees at the Employer's Louisville, Kentucky, plant, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act. The Employer, a Kentucky corporation engaged in the manufacture of television cabinets, would include in the unit the shipping clerk, the receiving clerk, the patternmaker, the factory payroll clerk, the timekeeper, the time-

¹ The name of the Employer appears as amended at the hearing.

² At the hearing, and prior thereto, the Employer requested that the Regional Director make available to it for inspection all documents filed by the Petitioner under Section 9 (f), (g), and (h) of the Act. The purpose of this request was to enable the Employer to interrogate the union representative concerning compliance should the Employer be dissatisfied with proof of the Petitioner's compliance. The Board has consistently held that, under the statutory scheme, whether a labor organization which is required to comply with the filing requirements of Section 9 (f), (g), and (h) has in fact done so is not litigable. Such a determination remains one entrusted to the Board in its administrative capacity. *Sunbeam Corporation*, 94 NLRB 844. As the Employer seeks merely to litigate the question of compliance we affirm the Regional Director and the hearing officer in their denial of the Employer's request. See *Sunbeam Corporation*, 93 NLRB 1205. Moreover, the Board has satisfied itself, from its administrative investigations, that the Petitioner is in compliance with the filing requirements of the Act.

³ As the record indicates that the Petitioner exists for the purpose of collective bargaining with the Employer with respect to wages, hours, and other conditions of employment, we find that the Petitioner is a labor organization as defined in the Act. *New Castle Products, Inc.*, 99 NLRB 811. As there is sufficient evidence of the Petitioner's status as a labor organization, the hearing officer properly refused the Employer's motion that the Petitioner produce its constitution and bylaws for examination and inspection.

⁴ The Employer contends that the petition should be dismissed on the ground that there is pending an unfair labor practice charge filed by the Petitioner against the Employer. As the Petitioner, the charging party in Case No. 9-CA-615, has filed a waiver of any right to urge any matters in that case as a basis of objection in this proceeding, we find this contention to be without merit. *U. S. Phosphoric Products Division*, 96 NLRB 7.

study men, and the watchmen sweepers. The Petitioner would exclude the patternmaker and the receiving clerk on the basis that they are salaried employees identified with management, and the shipping clerk on the ground that he is a supervisor.

The patternmaker and the receiving clerk: The patternmaker works under the direct supervision of the president of the corporation and his assistant, in a separate room in the production area. His job is to fabricate furniture, jigs, and pattern samples used in the production of the Employer's product. The receiving clerk is responsible for physically unloading inbound shipments of raw materials, and works in the production area of the plant under the same general working conditions as the production employees. Although both employees are salaried, they are essentially manual workers with no supervisory functions. Moreover, there is no evidence that the patternmaker or receiving clerk participate in the formulation of management policies or are the recipients of knowledge concerning their Employer's labor relations. On the basis of the above facts, we conclude that the patternmaker and the receiving clerk are not managerial employees.⁵ Accordingly, we shall include them in the unit.

The shipping clerk: The shipping clerk is responsible for the loading of outbound shipments of the Employer's products. He is paid on an hourly basis and works in the production area along with a permanent laborer whom he directs in the routine nature of his work. He does not have the authority to hire, discharge, discipline, or effectively to recommend such action. As the shipping clerk has interests similar to those of the production workers and is not a supervisor, we shall include him in the unit.⁶

We find that all production and maintenance employees⁷ at the Employer's Louisville, Kentucky, plant, including the shipping clerk, the receiving clerk, the patternmaker, the timekeeper,⁸ and the watchmen sweepers, but excluding office clerical employees, the factory payroll clerk,⁹ professional employees, guards, and supervisors¹⁰ as defined

⁵ *Northwestern Bell Telephone Company*, 79 NLRB 549.

⁶ *Stationers Corporation*, 99 NLRB 240; *O. Z. Hall Motors, Inc.*, 94 NLRB 1180.

⁷ Included in the above unit description are probationary employees who have not completed their 3-month probationary period.

⁸ *Daystrom Furniture Division, Daystrom, Inc.*, 101 NLRB 343; *Arcade Manufacturing Division*, 96 NLRB 116.

⁹ The parties would include the factory payroll clerk in the unit as a plant clerical employee. As the record indicates that the factory payroll clerk is a salaried employee spending 90 percent of her time in an office adjacent to the office used by the office clericals, and in view of the fact that the factory payroll clerk is primarily concerned with payroll computations, we believe that she has a greater community of interests with the office clerical employees than with the production and maintenance employees. Accordingly, she is excluded from the unit. *Peterzell & Gelles, Inc.*, 94 NLRB 346, 350.

¹⁰ The Petitioner originally objected to the inclusion of Walter Brown, an upfitter, on the ground that he was a supervisor. Thereafter, at the end of the hearing, the Petitioner indicated that it no longer would object to his inclusion. As Walter Brown has no authority to hire or discharge, or to change the status of any employee, we find that he is not a supervisor to be excluded under this classification. Accordingly, he is included in the unit.

in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.¹¹

5. The Employer contends, upon the basis of its 2 years' experience in the manufacture of television cabinets, that there will probably be a seasonal reduction in employment during the first quarter of 1953. Although the number of employees to be discharged was unknown at the time of the hearing, the Employer anticipates that of a present complement of 173 employees approximately 75 to 90 employees will remain after the reduction, if any. Upon the basis of the foregoing, the Employer asserts that no election should be held until the middle of March 1953, at the very earliest. The Petitioner desires an immediate election and contends that the employees who may be discharged if a reduction takes place should be eligible to vote in such election.

Although the Employer takes no position respecting the eligibility of these employees to vote in the event that a reduction in force occurs, the record indicates that it has been the Employer's practice in the past to consider as permanent all discharges resulting from seasonal declines in business.¹² However, the Employer advises these employees that they may come back when the seasonal market opens, and in the past has offered employment to discharged employees before hiring from the outside.

We have frequently held that the mere reduction in the number of employees in a unit is not in and of itself sufficient reason for postponing an election.¹³ In the present instance, it is clear that even if the Employer were to discharge the estimated number of employees (which event is by no means certain in view of the Employer's limited business experience), the remainder would still constitute a representative number of employees. We shall, therefore, direct an immediate election in the unit hereinbefore found appropriate.

Because, as noted above, it is uncertain that a reduction in force will take place, and as the number of employees to be affected and the conditions under which the reduction may occur were unknown at the time of the hearing, we shall make no final determination with respect to the eligibility issue raised by the Petitioner. We shall, accordingly, permit those employees discharged because of a seasonal decline in business to vote subject to challenge.¹⁴

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

¹¹ The Employer would include in the unit time-study men. As the Employer at present has no employees in this classification, and does not contemplate hiring such employees in the immediate future, we shall, in accordance with our usual policy, not make any unit determination with respect to this category. *Cities Service Refining Corporation*, 94 NLRB 1634.

¹² The Employer asserts that it designates all discharges as permanent because of its unsuccessful attempts in the past to recall discharged employees.

¹³ *Owen Steel Company, Inc.*, 92 NLRB 1334.

¹⁴ *Young Manufacturing Company*, 92 NLRB 140; *Mathews Lumber Company*, 89 NLRB 50.