

laid them off on May 1, 1952, for the reason that they had engaged in union activities, failed to meet the burden of required proof in that it has not been proven by a fair preponderance of the substantial evidence.

Summarizing the foregoing the Trial Examiner finds that the Company did not violate Sections 7 and 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Respondent Clifton Conduit Co. (Tennessee) Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. Respondent Clifton Conduit Co. (Tennessee) Inc., has not engaged in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

EVERETT PLYWOOD & DOOR CORPORATION, Petitioner
and LUMBER AND SAWMILL WORKERS UNION, LOCAL
NO. 2781, chartered by the UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, A. F. of L.

EVERETT PLYWOOD & DOOR CORPORATION *and* PLYWOOD
AND DOOR EMPLOYEES OF EVERETT, LOCAL NO. 1,
Petitioner. Cases Nos. 19-RM-73 and 19-RC-1187. May 27,
1953

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Robert E. Tillman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Lumber and Sawmill Workers Union, Local No. 2781, United Brotherhood of Carpenters and Joiners of America, A. F. of L., herein called Local 2781, made an offer of proof, consisting of voluminous documentary and other evidence, which the hearing officer rejected. The evidence was intended to support Local 2781's contention that Everett Plywood & Door Corporation, the named Employer in the two proceedings here consolidated, is not in fact the Employer of the employees involved, and that Plywood and Door Employees of Everett, Local No. 1, herein called Local No. 1, is not a labor organization as defined in the Act.

Local 2781 submitted this same evidence to the Board's Regional Office in support of its charges in Cases Nos. 19-CA-506 and 19-CA-630. In the first case Local 2781 charged a violation of Section 8 (a) (5) of the Act and alleged that the Employer was the alter ego of Robinson Plywood and Timber Company, which had sold the plant here involved to the Employer. In the second case Local 2781 charged a violation of Section 8 (a) (2) of the Act, and named Local No. 1 as the unlawfully dominated labor organization. After investigation, the Regional Director refused to issue complaint on either of these charges. On appeal, the General Counsel sustained the Regional

Director as to the first charge. No appeal was taken to his determination with respect to the second charge.

It is clear, and Local 2781 does not deny, that the proffered evidence was intended to prove substantially the same basic factual allegations which underlay the unfair labor practice charges. In effect, therefore, Local 2781 is attempting in this representation proceeding to achieve at least part of the objectives of the dismissed charges, that is, denial of employer status to the Employer and disqualification of Local No. 1 as a bargaining agent. However, Section 3 (d) of the Act makes the General Counsel the final arbiter in respect of the investigation of charges and the issuance and prosecution of complaints. Under established policy the Board will, therefore, not review directly the General Counsel's administrative dismissals of unfair labor practice charges; nor will the Board do so indirectly by examining the factual situation which was before the General Counsel, in order to dispose of allegations in representation proceedings as part of the Board's responsibility under Section 9 (c) of the Act.¹ Accordingly, we conclude that the hearing officer properly rejected Local 2781's offer of proof.

Upon the entire record in this case, the Board finds:²

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

2. The labor organizations involved claim 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. Local No. 1 and the Employer agree upon a unit of all production and maintenance employees employed at the Employer's Everett, Washington, plant. Local 2781 contends that because these employees are stockholders of the Employer they are not employees and may not be found to constitute an appropriate bargaining unit in a Board proceeding.

The record shows that the Employer was incorporated on February 20, 1951, under the laws of the State of Washington, for the purpose of engaging in the business of manufacturing, buying, and selling plywood, sash, and doors and to engage in related activities. The corporation authorized issuance of 524 shares of stock with a par value per share of \$3,500, of which 480 shares were sold. Each of its present complement of approximately 365 employees is a stockholder, and 110 shares are owned by persons not employed by the Employer. Except for 1 stockholder who owns 5 shares of stock, each stockholder has only 1 share and each stockholder has only 1 vote in the meetings of the corporation.

The Employer commenced operations shortly after May 15, 1951. Initially a limited number of nonstockholders were employed in addition to stockholder-employees. Their number

¹ Times Square Stores Corporation, 79 NLRB 361.

² Local 2781's request for oral argument is hereby denied inasmuch as the record, including the briefs, adequately presents the issues and the positions of the parties

was subsequently gradually reduced, as one of the primary purposes of the Employer's "cooperative" setup was to give job preference, job security, and a uniform guaranteed wage to its stockholder-employees. Since November 1, 1952, only stockholder-employees have been employed, and the Employer does not expect to hire any nonstockholders in the foreseeable future.

The record further shows that the stockholder-employees work in a wide variety of job classifications customary in the plywood industry. They are hired, instructed, and directed in their work by a management group, which consists of a general manager, two superintendents, a head millwright, and a number of foreman and leadmen. Working hours and working conditions are established by agreement between the general manager and the superintendents. Irrespective of job classification, all stockholder-employees are paid a uniform hourly wage rate as determined and from time to time changed by the board of directors; originally \$3 per hour, this rate is now \$2.10 per hour. The employees may be transferred from one job to another by the supervisors, and if they are unfit for employment or refuse to do the work as assigned by management, they may be discharged by the board of directors. On the matter of discharge, each employee has a right to a hearing before the corporation membership, which may advise, but not overrule, the directors. Payments of social security and unemployment compensation are made for the employees by the Employer, which also makes income tax deductions from their earnings.

On these facts, we find no merit in the contention of Local 2781 that the stockholders working for the Company are not employees of the Employer. The mere fact that an employee also has the rights and privileges of a stockholder is not sufficient to debar him from availing himself, in his capacity as an employee, of the rights of employees to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.³ On the entire record in this case, we are satisfied that the stockholder-employees not only have a proprietary interest in the Employer-corporation, but also have an interest, at least as great, in their status as paid workers. We therefore conclude that they are employees within the meaning of the Act and that it will effectuate the policies of the Act to secure to them in these proceedings the rights guaranteed employees in Section 7 of the Act.

Accordingly, we find 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:

All maintenance and production employees employed at the Employer's Everett, Washington, plant, excluding office clericals, plant clericals, professional employees, guards, employees on the Employer's board of directors, and the sander-in-

³ Olympia Shingle Company, 26 NLRB 1398, 1414.

charge, the head operator millwright, the head edge gluer, and all other supervisors as defined in the Act.⁴

[Text of Direction of Election omitted from publication.]

⁴We have excluded employees serving on the Employer's board of directors, because they are a clear management group. We have also excluded, as supervisors, the sander-in-charge, the head operator millwright, and the head edge gluer because the record shows that they have power to recommend the hire and discharge of other employees, to recommend transfer of employees from one position to another, and to assign work to the employees under their supervision.

CLAROSTAT MFG. CO., INC. *and* INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND MACHINE WORKERS LOCAL
242, CIO, Petitioner. Case No. 1-RC-2295. May 27, 1953

SUPPLEMENTAL DECISION AND ORDER AMENDING CERTIFICATION OF REPRESENTATIVES

Following the filing of a petition in the above-entitled proceeding a representation hearing was held on July 17, 1951, before George A. Sweeney, hearing officer. At this hearing, the parties stipulated that the following unit was appropriate:¹

All factory production, maintenance, and clerical employees at the Employer's Dover, New Hampshire, plant, excluding executive and office clerical employees, superintendents, foremen and general foremen, engineers, inspectors of the engineering department, guards, and supervisors as defined in the Act.

Following a Board-directed election on August 30, 1951, in that unit, the Board on September 10, 1951, issued a Certification of Representatives in which the Union was certified as bargaining representative for said unit. Thereafter, on November 14, 1952, counsel for the Union filed a motion requesting that the certification be clarified by amending the unit to include specifically production control clerks and inspectors who work in the production areas. The Union based its motion upon the ground that the Employer refused to bargain collectively for those employees whom it claimed were not properly included in the bargaining unit in accordance with the parties' stipula-

¹The record shows that the original petition called for a unit of factory production and clerical employees including inspectors and sweepers. At the preelection hearing, the unit was amended so as to exclude inspectors in the engineering department. The Employer's counsel agreed to the change except that he would substitute the word "of" for the word "in" before the phrase "the engineering department." The record does not reveal the reason why the Employer's counsel urged this change. In any event, the Union agreed to the substitution and the unit as amended was stipulated by the parties.