

For the same reasons that we have found inappropriate the separate units sought by the Petitioner, we find that a single unit of the maintenance and garage employees is likewise inappropriate. Accordingly, we shall dismiss the petitions.

[The Board dismissed the petitions.]

HENRY L. PEIRONE AND JOHN A. NEVELL, d/b/a ALLOY MANUFACTURING COMPANY, Petitioner *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE NO. 942, AFL.¹ Case No. 19-RM-118. February 19, 1954

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 E. R. Ormsbee, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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. The Employer asserts that the instant proceeding is barred because of a consent-election agreement between it and the Union.

On August 27, 1953, the Union requested recognition from the Employer as bargaining representative of its employees. The Employer declined recognition and filed the instant petition on September 10, 1953. Later, the parties duly executed, on October 22, 1953, an agreement for consent election which was approved by the Regional Director. At a conference held on November 12, 1953, the day of the proposed election, the parties disputed the voting eligibility and unit placement of certain individuals. Thereupon, failing to reach agreement with the Employer on these questions, the Union stated that it was withdrawing from the consent election. In view of the Union's withdrawal, the field examiner in charge of the election canceled it. Thereafter, the Regional Director issued a notice of hearing and on November 30 a hearing was held on the instant petition.

The Employer contends that the cancellation of the election and the scheduling of the hearing were improper under the Board's Rules and Regulations. At the hearing, the Employer moved that the hearing be "dismissed," and that an order be issued staying the instant proceeding for a period of 1 year thereafter, barring the Union during that period from making

¹The Employer's and Union's names appear as corrected at the hearing

any demand for recognition or for an election. This motion was referred to the Board.

While the Board's Rules make no express provisions for withdrawal of a party from a consent-election agreement, we do not believe that the withdrawal of the Union from the instant election agreement requires us to invalidate the subsequent proceedings. In this case, we are unable to perceive in what respect the Employer was prejudiced by the holding of the hearing on its petition. The purpose of the hearing was to adduce evidence on disputed issues as to the unit placement and voting eligibility of certain employees, which are proper matters for investigation by the Board. The Employer contends that the failure to conduct the consent election when it was originally scheduled deprived its employees of their right to an expeditious settlement of the representation question. However, the relief requested by the Employer would further postpone the settlement of this question.

Even if we treat the Employer's motion as a request to withdraw its petition, the granting of such request is within the Board's discretion.² As the Union has made a showing of interest sufficient to maintain a petition in its own right and desires an immediate election, we regard the Union as in the posture of a cross-petitioner and therefore do not believe that the policies of the Act would be effectuated by granting the Employer's motion.³ We find, therefore, that 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 parties stipulated that the appropriate unit consists of all production and maintenance employees. However, they disagree as to the unit placement of three employees.

Earl Collett: The Union contends that Collett should be excluded as a supervisor, while the Employer would include him. The record shows that he spends approximately 90 percent of his time performing manual labor, and the other 10 percent directing the Employer's 9 other employees. Such direction is merely routine and does not involve the exercise of independent judgement. One or the other of the two partners who constitute the Employer is almost always present at the plant and actively supervises the operation of the employees involved herein. Collett has no authority to hire, discharge, promote, or transfer employees, nor authority effectively to recommend such action. We find that he is not a supervisor within the meaning of the Act and shall include him in the unit.

Frank Pignanelli: The Union would exclude Pignanelli on the ground that his interests are allied with management, while the Employer would include him. The parties stipulated that "Frank Pignanelli is a nephew of Mr. Pierone, partner of the Alloy Manufacturing Company, and that in all other respects he

²Grinnell Brothers, 88 NLRB 397. See Section 102.52 of the Board's Rules and Regulations.

³Grinnell Brothers, *ibid*.

is a regularly hourly paid employee of said Company, as a sheet metal specialist." As there is no evidence that he enjoys a special status because of his relationship, which allies his interests with those of management, we will include him in the unit.⁴

Claude Austin: The Union would exclude Austin as a guard within the meaning of the Act, while the Employer would include him. The record shows that Austin is employed full time as a maintenance and parts man. When he is the last to leave he locks up the plant. His house is adjacent to the plant and when he is at home he keeps an eye on it. This is voluntary on his part and he receives no compensation for this. On several occasions he has notified the police when he saw prowlers near the plant. We find that Austin is not a guard within the meaning of the Act and shall include him in the unit.⁵

We find that all production and maintenance employees at the Employer's plant at R.F.D. No. 1, Spokane, Washington, including Earl Collett, Frank Pignanelli, and Claude Austin, but excluding office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The Union contends that Donald Newton and Lloyd Evans have been only temporarily laid off and, hence, should be permitted to vote in the election directed herein. The Employer asserts that they have been permanently laid off.

Newton and Evans were laid off on August 27, 1953, the same day that the Union requested recognition from the Employer as bargaining representative. The Union filed unfair labor practice charges against the Employer on September 14, asserting that the two employees had been discharged for their union activities. The charges were withdrawn after the Union and Employer concluded a settlement agreement on October 22, 1953,⁶ which provided that Newton and Evans were not discharged but merely laid off and would be recalled to work before any new employees in their work classifications were hired. This is the basis for the Union's assertion that they have been only temporarily laid off.

The Employer contends that the nature of its business is changing from the use primarily of aluminum to the increased use of steel. As the use of steel requires welding ability and neither Newton nor Evans is qualified to weld, the Employer asserts that this "makes it less likely that either Newton or Evans will be rehired."

The Employer's business has a slack period commencing in the fall and lasting until spring. As the Employer's business

⁴International Metal Products Company, 107 NLRB 65.

⁵For the same reason indicated in the case of Pignanelli, we find that the fact that Austin is the father-in-law of one of the Employer's partners is not sufficient basis for excluding him from the unit.

⁶On the same day, the parties signed the consent-selection agreement.

activity will increase shortly after the date of this Decision and as the Employer has agreed to reemploy Newton and Evans before it hires any new employees in their work classifications, and is still using employees in such classifications, we find that they have a reasonable expectation of reemployment in the near future and that they are therefore eligible to vote in the election.

[Text of Direction of Election omitted from publication.]

Member Rodgers took no part in the consideration of the above Decision and Direction of Election.

WISCONSIN ELECTRIC POWER COMPANY *and* LOCAL NO. 317, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL, Petitioner. Case No. 13-RC-3606. February 19, 1954

DECISION AND DIRECTION OF ELECTIONS

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

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

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.¹
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 to supplant Division 998 as bargaining representative for a unit composed of three groups of employees of the Employer: Plant maintenance men; janitors, watchmen, elevator operators, and matrons; and the non-clerical employees in the central stores division. Division 998 agrees with the Petitioner that its present bargaining unit is appropriate. Local 2 seeks to add the storekeepers, stock disbursers and receivers, and appliance deliverymen of the

¹Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL, referred to herein as Division 998, intervened on the basis of its contract interest, Local 2, United Association of Office, Sales and Technical Employees, referred to herein as Local 2, was permitted to intervene on the basis of an interest showing over the objections of the Petitioner and Division 998. The authorization cards on which Local 2 relies were obtained between the date of the first hearing in this matter and the date of the continued hearing. Since they were acquired before the close of the hearing, we affirm the hearing officer's ruling permitting Local 2 to intervene. Virginia-Carolina Chemical Corporation, 101 NLRB 1336.