

It was testified on behalf of the Employer that laid-off employees would be recalled to replace the normal turnover of employees, which consists, on average, of about 1 percent per month of the employee payroll. The testimony further indicates that the Employer will additionally recall, because of an anticipated increase in production, 20 employees in September; 20 in October; 30 in November; and 25 in December; or a total of 95 employees by January 1, 1955. Adding to this figure the number of employees to be recalled by January 1, 1955, in replacement of normal turnover, i. e., approximately 92 employees, we reach the total of about 187 employees who will, according to record testimony, specifically be recalled by January 1, 1955. After the close of the hearing on August 4, 1954, the Employer notified the Board by letter (with copies to the parties), that because of "increased sales," it intends to recall in the month of September about 100 more of the laid-off employees, in addition to the approximately 187 indicated above. However, the Board was advised by the IUE that it objected to the admission of the Employer's posthearing statement into the record.

It is well established that laid-off employees are eligible to vote in Board elections if they have a reasonable expectation of reemployment in the near future, to be determined as of the date of the election.<sup>2</sup> In our opinion, the record in this case indicates with sufficient specificity that the laid-off employees herein involved have a reasonable expectancy of recall in the near future. Accordingly, we find that, as a group, they are eligible to vote in the election. However, where it reasonably appears to any party at the election that an individual laid-off employee is ineligible, the ballot of such employee may be challenged.

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and RODGERS took no part in the consideration of the above Decision and Direction of Election.

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<sup>2</sup> See, e. g., *F. B. Rogers Silver Company*, 95 NLRB 1430, 1432; *Fresh'nd-Aire Company, Division of Cory Corporation*, 107 NLRB No 183 (not reported in printed volumes of Board Decisions and Orders)

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AMERICAN CAN COMPANY *and* LOCAL 74, AMALGAMATED LITHOGRAPHERS OF AMERICA, CIO, PETITIONER *and* LOCAL UNION No. 2120, UNITED STEELWORKERS OF AMERICA, CIO. *Case No. 10-RC-2557. September 21, 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 Gilbert Cohen, hearing of-  
110 NLRB No. 3.

ficer.<sup>1</sup> 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 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. The Petitioner and the Employer agree that a unit of lithographic pressmen and feeders and their apprentices at the Employer's Tampa, Florida, plant, otherwise called plant 41-A, is appropriate for bargaining purposes. The Intervenor contends that the requested unit is inappropriate, on the ground that the appropriate unit for the employees sought by the Petitioner is a multiplant unit, consisting of employees at some 37 plants of the Employer, including plant 41-A, which are currently covered by the Steelworkers' master agreement, or in the alternative, a unit of all production and maintenance employees at plant 41-A. The Intervenor moved to dismiss the petition on this ground, but wished to be on the ballot if the Board directs an election among the lithographic employees.

The Employer's companywide operations and its bargaining relations with the Steelworkers have been described in our decision in the *American Can Company* case noted above,<sup>2</sup> and that description is applicable here. We shall therefore limit our decision in the instant case to a consideration of such additional facts as relate specifically to the Employer's operations at plant 41-A and its relations with the Steelworkers at this plant.

#### Operations at Plant 41-A

At plant 41-A, the Employer is engaged in the manufacture, enameling, and decoration of containers and in related operations. It divides its operations into several departments, including can manufacturing, end or press fiber milk container, shipping, tinsplate, and enameling and decorating departments. The employees sought by the Petitioner work in the enameling and decorating department.

<sup>1</sup> At the hearing, the parties agreed in substance that the record of the testimony taken in *American Can Company*, 109 NLRB 1284, be incorporated into the record in the instant case, insofar as such testimony relates to the multiplant issue raised herein. We have taken official notice of such testimony.

United Steelworkers of America, CIO, hereinafter called the Steelworkers, intervened at the hearing on behalf of its Local Union No. 2120, hereinafter called Local 2120.

The Intervenor's motion to dismiss the petition is denied for reasons stated below.

<sup>2</sup> See *American Can Company*, *supra*.

## The Bargaining History at Plant 41-A

On November 13, 1950, following the execution of the 1950 basic agreement<sup>3</sup> between the Employer and Steelworkers, the latter filed a petition in Case No. 10-RC-1147<sup>4</sup> for certification as the exclusive collective-bargaining representative of production and maintenance employees at plant 41-A. On February 12, 1951, following a consent election, the Regional Director certified the Steelworkers (no local) as such representative. Thereafter, a series of local agreements and supplements involving employees at plant 41-A were executed. On March 17, 1951, the Employer and the Steelworkers executed a supplement to the basic agreement, adding to the coverage thereof a unit of production and maintenance employees at plant 41-A and identifying Local 2120, the Intervenor herein, as the local union at this plant. On the same day, "American Can Company Tampa Factory, 41-A" and Steelworkers executed a local agreement. The preamble of this agreement recited that it had been made by the employer in respect only to the Tampa factory, "hereinafter referred to as the 'Local Management,'" and by the Steelworkers on behalf of Local 2120, "hereinafter referred to as the 'Local Union.'" The agreement, which stated that it had been executed pursuant to provisions of the basic agreement, provided, *inter alia*, for a wage structure, for progressive wage increases for certain categories of employees, and for grievance and safety committees. The local agreement also designated Gasparilla Day as the sixth paid holiday and set forth "Local Seniority Rules." On June 18, 1951, representatives of the "Company" and the "Union" executed a supplemental agreement. After reciting that it had been made by the Employer in respect only to the Tampa factory and by the Steelworkers on behalf of Local 2120, this agreement provided for certain changes in the seniority provisions of the local agreement.

On October 8, 1952, the local seniority rules were further amended by another supplemental agreement applying solely to the Tampa plant and the Employer's Auburndale warehouse. In June 1953, another supplement was executed relating to changes in local seniority rules at the Tampa plant.

On January 12, 1954, representatives of the Employer and the Steelworkers and of about 35 of its local unions executed a new master contract, which is described in detail in the *American Can* case, noted above, and which was still in effect at the time of the hearing in this case. With respect to plant 41-A, this contract sets forth a unit of

<sup>3</sup> This agreement and its subsequent amendments and supplements are discussed in more detail on pages 3 and 4 of the Board's decision in the *American Can Company* case cited above.

<sup>4</sup> Not reported in printed volumes of the Board Decisions and Orders.

production and maintenance employees and identifies Local 2120 as the local union at the plant.

The pattern of bargaining at the Tampa plant here involved is comparable to that which prevailed at the Employer's Oakland, California, plant considered in our recent decision, cited above. In both cases the Steelworkers was certified by the Board as the representative of a separate unit of production and maintenance employees at each plant, and thereafter executed basic, master agreements with the Employer covering 37 of the Employer's 85 plants, including the Oakland and Tampa plants. These agreements have been supplemented in the case of both the latter plants by local agreements relating to important terms of the employment relation. In the Oakland case we found that such a hybrid bargaining history gave no clear indication as to whether the parties "actually intended to effect a consolidation of the local plant units, thereby destroying the separate identity of each." We therefore found the bargaining history alone not to be decisive of the unit issue in the Oakland case. For like reasons, we find that the bargaining history at the Tampa plant, as recited above, is not decisive of the unit issue in the instant case.<sup>5</sup>

Turning to consideration of other factors bearing on the relative appropriateness of the single-plant unit sought by the Petitioner and the multiplant unit proposed by the Intervenor, we find, as we did in the Oakland case, that such factors preponderate in favor of a finding that a unit limited to a single plant is appropriate. Thus, as in the Oakland case, there is no substantial transfer of employees between the Tampa plant and the other plants of the Employer. Moreover, the 37 plants covered by Steelworkers' contract, which plants Steelworkers contends alone constitute an appropriate unit, do not comprise any functional, administrative, or geographic segment of the Employer's operations. Accordingly, we find that a unit limited to the Tampa plant is appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

### The Proposed Lithographic Unit

The question remains whether the lithographic unit sought by the Petitioner may appropriately be severed from the existing plantwide unit at the Tampa factory. As already noted, the Petitioner and the Employer agree that a unit of lithographic pressmen and feeders and their apprentices in the enameling and decorating department is appropriate while the Intervenor contends, as its secondary position, that a unit of production and maintenance employees at this plant is alone appropriate.

<sup>5</sup> Chairman Farmer and Member Peterson disagree with this factual conclusion but deem themselves bound by the majority opinion in *American Can Company*, 109 NLRB 1284, which involved the same master agreement and the same local supplementary bargaining.

The employees sought work in the enameling and decorating department. Other employees in that department include production mechanics, paint room employees, stackers, oilers and greasers, coater operators, truck operators, inspectors, and open-and-sort plants employees. The lithographic pressmen operate presses of standard design and exercise the usual skills of their craft. They are highly skilled employees.<sup>6</sup> Pressmen and feeders work as teams, the feeders assisting the pressmen. Feeders also operate presses during the absence of the pressmen. Only a feeder may become an apprentice pressman, in which case he receives credit for the time he spent operating a press before his apprenticeship. The other employees in the enameling and decorating department perform the usual duties of their classification. They work under the same immediate supervision as the lithographic employees. However, they are not shown by the record to be skilled employees, nor do they have, in any event, the close association with the lithographic process that would warrant their inclusion in the same group with lithographic employees.<sup>7</sup> There are no other employees in the plant who do work similar to that performed by the pressmen and the feeders.

The Board has frequently considered the skills and techniques incident to the lithographic process and has held that all employees engaged in that process form a cohesive unit appropriate for the purposes of collective bargaining.<sup>8</sup> Furthermore, the Petitioner's International is a union which has traditionally devoted itself to serving the special interests of lithographic employees. In view of the foregoing, and in accordance with our decision in the *American Potash* case,<sup>9</sup> we find that as the lithographic pressmen are true craftsmen, and as both the feeders and the apprentice pressmen stand in the line of progression to the job of pressman, all three categories may, together, constitute a separate appropriate unit, if they so desire.

We shall, accordingly, direct an election by secret ballot among employees in the following voting group at the Employer's Tampa, Florida, plant, known as plant 41-A.

All lithographic pressmen, apprentice pressmen, and feeders,<sup>10</sup> excluding all other employees.

We shall make no final unit determination at this time, but shall first ascertain the desires of the employees as expressed in the election hereinafter directed.

If a majority of the employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to consti-

<sup>6</sup> The 1950 basic agreement as supplemented and the master agreement each provide for an apprenticeship of 8,000 hours for these workers.

<sup>7</sup> See *The Heekin Can Company*, 89 NLRB 717 at 719.

<sup>8</sup> *Fey Publishing Company*, 108 NLRB 1031, and cases cited therein.

<sup>9</sup> *American Potash & Chemical Corporation*, 107 NLRB 1418.

<sup>10</sup> Although the Petitioner sought apprentice feeders, the record shows that no such persons are employed at the Tampa plant. Accordingly, we do not pass upon their unit placement.

tute a separate appropriate unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for the employees in the above voting group, which the Board, under such circumstances, finds to be an appropriate unit for the purposes of collective bargaining. On the other hand, if a majority of the employees in the voting group vote for the Intervenor, the employees in the voting group will remain in the overall bargaining unit and the Intervenor may bargain for the employees in the above-named categories as a part of the group which it currently represents, and the Regional Director conducting the election is instructed to issue a certification of results of election to such effect.

5. The Employer's operations at plant 41-A are seasonal. At the time of the hearing, which was held on March 24, 1954, there was a high level of employment in the enameling and decorating department, but not throughout the plant. Normally, however, in all departments, the Employer's peak season extends from about October 1 to June 1, and its slack season extends during the remainder of the year. Although the positions of the parties are not entirely clear on this point, it appears that they agreed that the Regional Director, after consultation with the parties, should select an eligibility date which would insure participation in the election by the maximum number of the employees concerned. Under these circumstances, we shall direct that the election be held during the next peak season, on a date to be determined by the Regional Director, among employees in the voting group described above who will be employed during the payroll period immediately preceding the date of issuance of the notice of election.

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and RODGERS took no part in the consideration of the above Decision and Direction of Election.

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MILTON RUBIN, MRS. ROSE RUBIN, HERMAN WALDMAN, BERNICE WALDMAN, D/B/A DALLAS CITY PACKING COMPANY and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 528, PETITIONER. *Case No. 16-RC-1458. September 21, 1954*

### **Supplemental Decision and Certification of Representatives**

Pursuant to a Decision and Direction of Election<sup>1</sup> dated June 22, 1954, an election by secret ballot among employees of the Employer in

<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.