

**"M" System, Inc., Mobile Home Div., Mid-States Corp. and Lodge 1243, International Association of Machinists, AFL-CIO, Petitioner.<sup>1</sup> Case No. 16-RC-1773. May 14, 1956**

### 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 Lewis A. Ward, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

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

1. The Employer is a Mississippi corporation operating in the State of Texas where it is engaged in the manufacture and sale of mobile homes, commonly referred to as house trailers. From January to October 1955, the date of the hearing herein, the Employer made out-of-State purchases of raw materials in excess of \$500,000. During the same period, the Employer's sales totalled in excess of \$500,000, all of which were made within the State of Texas.

<sup>1</sup> The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the Petitioner accordingly.

<sup>2</sup> At the hearing, the Employer moved to dismiss the petition on the following grounds: (1) The Petitioner has not complied with the filing requirements of the Act; (2) the Petitioner's showing of interest is insufficient; (3) the Petitioner's authorization cards were fraudulently procured; (4) the Petitioner's demand for recognition was not made prior to the filing of its petition; and (5) the Petitioner is not authorized to receive into membership employees of the Employer. These motions were referred to the Board by the hearing officer. With respect to (1), the Board has held that the fact of compliance by a labor organization required to comply may not be litigated in Board representation proceedings, but has adopted the practice of permitting parties to such proceedings to cause to be instituted an administrative investigation of those compliance matters which the Board may properly decide in collateral proceedings. See *Desaulniers and Company*, 115 NLRB 1025, footnote 3. However, the Board is administratively advised that the Petitioner has at all times material to this proceeding been and now is in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act. Member Rodgers believes that the Employer has the right under the Act to litigate the fact of the Petitioner's compliance in the representation proceeding itself. Accordingly, he would reopen the record herein to allow the Employer to do so. See his dissent in *Desaulniers, supra*. See also *N. L. R. B. v. Puerto Rico Products Corp.* (C. A. 1), decided April 26, 1956. Regarding (2), the Board has consistently ruled that showing of interest is a matter for administrative determination and cannot be litigated in representation proceedings. See *The Sheffield Corporation*, 108 NLRB 349. Moreover, we are administratively satisfied that the Petitioner has made an adequate showing of interest in this proceeding. As to (3), although the Employer contended at the hearing that the Petitioner's authorization cards were procured by fraud, it submitted no evidence to substantiate this claim and in fact conceded that it has no such evidence to offer in this connection. Under the circumstances, we find no merit in this motion to dismiss. With regard to (4), although the Petitioner did not request recognition prior to filing its petition, the Employer refused at the hearing to accord recognition to the Petitioner. In view of that refusal, the failure to request recognition before filing the petition provides no basis for dismissing the petition. See *American Tobacco Company, Incorporated*, 108 NLRB 1211. Concerning (5), the Board has uniformly held that the willingness of a petitioner to represent employees, rather than the eligibility of employees to membership in the petitioner, is controlling under the Act. *Gusdorf & Son*, 107 NLRB 998. Accordingly, the foregoing motions to dismiss by the Employer are denied.

For the reasons stated *infra*, the Employer's additional motion to dismiss the petition on the ground that the requested unit is inappropriate is hereby denied.

The Employer contends that the Board should not assert jurisdiction over its operations because none of its sales were made outside the State of Texas. Although, like other companies, this Employer sells its products, it carries on essentially a manufacturing operation. In *Jonesboro Grain Drying Cooperative*,<sup>3</sup> the Board set forth the dollar-volume criteria for the assumption of jurisdiction over enterprises such as that involved herein. In that case, the Board announced that it would assert jurisdiction over an enterprise, such as the Employer's, if the enterprise received goods or materials from out of State valued at \$500,000 or more per year, without regard to whether the enterprise made out-of-State sales. As the Employer in this case made out-of-State purchases of materials in excess of \$500,000, we find that the *Jonesboro* jurisdictional standard has been met. Accordingly, the Employer's contention that the Board should decline jurisdiction is rejected.

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. The appropriate unit:

The Petitioner seeks a unit of all production and maintenance employees at the Employer's plant in Texarkana, Texas, including inspectors, leadmen, the saw filer, the power tool serviceman, and the stockroom clerk, but excluding office clerical employees, professional employees, the over-the-road truckdriver, the office maid, watchmen, guards, and all supervisors as defined in the Act. The Employer contends that the unit sought is inappropriate and for that reason the petition should be dismissed. Alternatively, the Employer requests that, if the Board finds that the unit proposed by the Petitioner is appropriate, the Board should exclude the leadmen, the saw filer, the power tool serviceman, the inspectors, and the stockroom clerk, in addition to the exclusions sought by the Petitioner. There is no history of collective bargaining at this plant.

The Employer is engaged in the manufacture of house trailers. Its Texarkana plant is comprised of warehouse, frame and axle assembly, mill, main assembly, paint, and final finish departments. The warehouse employees receive materials used in the construction of the trailers and distribute them to the departments where needed. The frame and axle assembly employees fabricate trailer frames by welding I-beams and install axles and wheels. Mill department employees cut and shape lumber to prescribed sizes for construction of trailer coaches and, when required, convey the lumber to the main assembly department. Employees in the main assembly department lay the

floors in the trailer frames, erect the walls and ceilings, insulate the units, and install the plumbing. The employees in the paint department varnish the trailer interiors and paint the units. The final finish department installs fixtures, furniture, and appliances. The trailers are then ready for sale or delivery.

The record discloses that practically all the employees in the foregoing departments work from 7 a. m. to 4 p. m., they are ultimately supervised by the plant superintendent, they are all hourly paid, they use a common entrance to the plant, and they punch a common time clock. Moreover, the record reveals instances of interchange and transfers both within, and among, the various departments.

The Employer contends that the requested unit is inappropriate because it includes separate departments the employees of which perform separate and distinct operations. It urges that separate departmental units should be established. However, even assuming that units smaller than a plantwide unit might be appropriate on some basis, no other labor organization seeks to represent them on such a basis. Accordingly, in view of the integrated nature of the Employer's operations, the instances of interchange and transfers within and between the departments, and the facts that all employees generally work the same hours, are paid on the same basis, and are ultimately supervised by the plant superintendent, we find that a plantwide unit of production and maintenance employees is appropriate. We shall therefore direct an election in such a unit.

We turn now to a consideration of the unit placement of the leadmen, the saw filer, the power tool serviceman, the inspectors, and the stockroom clerk.

*A. Leadmen:* The Employer would exclude the leadmen on the ground that they are supervisors. The Petitioner would include them. There are 10 leadmen in the main assembly plant who work directly under the foremen of their respective sections. The record discloses that these individuals assume the duties and responsibilities of their foremen when the latter are absent, they have the authority effectively to recommend the hire, discharge, and promotion of employees working under them, and they receive between 25 and 30 cents an hour more than the other employees in their department. In view of the foregoing, we find that the leadmen are supervisors within the meaning of the Act and we shall exclude them from the unit.<sup>4</sup>

*B. Saw filer and power tool serviceman:* The saw filer, who regularly works approximately 75 percent of the workweek in the main assembly plant, sharpens and replaces the Employer's conventional saws. When employed, he works the same hours as the production and maintenance employees and, so far as appears, is subject to the same

<sup>4</sup> See *W. F. & John Barnes Company*, 96 NLRB 1136, 1139.

conditions of employment. As part of his duties, the saw filer reports to the foreman concerning instances where employees have consistently abused saws and such reports may lead to disciplinary action being taken by the foreman. However, the saw filer does not work with any other employees. The power tool serviceman services the power-driven electrical screw drivers and saws. He is apparently a full-time employee who is directly responsible to the plant superintendent. Like the saw filer, the power tool serviceman reports instances of the abuse of tools to the foreman which reports may also lead to disciplinary action being taken. Also like the saw filer, the power tool serviceman does not work with any other employees.

The Employer urges that the saw filer and power tool serviceman should be excluded from the unit on the ground that they are managerial employees. On the basis of the foregoing, we are not persuaded that the duties and interests of these employees are so closely allied with management so as to warrant their exclusion from the production and maintenance unit herein found appropriate. We shall therefore include them.

C. *Inspectors*: There are two inspectors who are responsible to and receive instructions from the final finish department foreman as to the units to be inspected on the assembly line and prior to sale. Part of the duties of one of the inspectors consists in conveying the Employer's mail to the downtown area. The Employer contends that these two employees should be excluded from the unit because "of the responsibility of their job and the nature thereof." As the record fails to establish in what manner, if any, the conditions of employment of the inspectors differ from those of the other employees in the final finish department, who are included in the unit, as the inspectors are under the same supervision as the final finish department employees, and as the record fails to establish that these employees are either supervisory or managerial employees, we shall include them in the unit.<sup>5</sup>

D. *Stockroom clerk*: The stockroom clerk is employed in the warehouse building where he checks materials which come in and leave the plant, routes the shipments, maintains invoices, and issues receipts. He is supervised by the same foreman who supervises the other employees in the warehouse. The Employer contends that the stockroom clerk should be excluded from the unit, apparently because he is a supervisor. However, the Employer concedes on the record that this employee has no supervisory authority. Under the circumstances, we find that the stockroom clerk is not a supervisor within the meaning of the Act and we shall include him.<sup>6</sup>

Accordingly, we find that all production and maintenance employees at the Employer's plant in Texarkana, Texas, including inspectors,

<sup>5</sup> See *Metal Products Corporation*, 107 NLRB 94, 96.

<sup>6</sup> See *McGough Bakeries Corporation*, 90 NLRB 2004.

the saw filer, the power tool serviceman, and the stockroom clerk, but excluding leadmen, office clerical employees, professional employees, the over-the-road truckdriver, the office maid, watchmen, guards, and all 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.

[Text of Direction of Election omitted from publication.]

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**D'Arcy Company, Inc. and Chauffeurs, Teamsters & Helpers  
Local Union 633, International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.<sup>1</sup>**  
*Case No. 1-CA-1981. May 15, 1956*

### DECISION AND ORDER

On December 28, 1955, Trial Examiner James A. Corcoran issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, in violation of Section 8 (a)-(1) and (3) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief; the General Counsel filed a brief in support of the Intermediate Report and a motion to strike the Respondent's exceptions.<sup>2</sup>

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions,<sup>3</sup> and recommendations of the Trial Examiner.

### ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, D'Arcy Com-

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<sup>1</sup> The AFL and CIO having merged, we show the affiliation of the Union accordingly.

<sup>2</sup> The motion was based on an asserted lack of specificity in the Respondent's exceptions. While it is true that the exceptions were very broad, they were accompanied by a brief which made the Respondent's position clear. Accordingly, the General Counsel's motion is denied.

<sup>3</sup> The finding of the Trial Examiner that it is "the effect, not motivation" which determines whether an unfair labor practice has been committed must, of course, be limited to violations of Section 8 (a) (1). Motive is an essential element in a violation of Section 8 (a) (3). It is clear from the Intermediate Report that the Trial Examiner has correctly applied this rule of law in finding violations of Section 8 (a) (3).