

Bergen Knitting Mills, Inc., Petitioner and Local 222, International Ladies Garment Workers Union, AFL-CIO. Case No. 22-RM-42. December 31, 1958

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 Clement P. Cull, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Leedom and Members Rodgers and Jenkins].

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 is engaged in manufacturing sweaters at its plant in Union City, New Jersey. It contends that the Union has made a demand for recognition as the bargaining representative of its employees and that the Union was picketing for that purpose. The Union argues that it has made no demand for recognition and that therefore no question concerning representation exists. It asserts that it does not represent the Employer's employees and that its continued picketing is for organizational purposes only.

On September 18, 1958, the Union, without prior notice, commenced picketing the Employer's plant,¹ and 4 days later, on September 22, the Employer filed the petition herein. The pickets, at times numbering from 3 to 40, impeded access to the plant by massing together and making entrance into the plant difficult. Delivery trucks were stopped by pickets and some of them turned back without making delivery. Pickets carried placards bearing the Union's name and inscriptions such as "Stop Unfair Price Cut, Get Union Pay, Join a Union," "Workers of Bergen Knit on Strike," and "Workers of Bergen Strike for Union Agreement."² The Employer's president was also frequently accosted, on entering or leaving the plant, by pickets calling to him to "sign a contract and get this over with" and "why don't you go up to headquarters and get this over with." Further, while picketing was in progress, the Employ-

¹ None of the Employer's employees appeared on the picket line until October 7.

² The Employer's president testified that on October 13, he saw this latter sign along with other picket signs resting against the plant fence. The existence of such sign is not disputed.

er's vice president approached a group of his employees who were standing outside the plant and asked them to come to work. Union Business Agent Cooper stopped him with the assertion that if he wanted to talk to these people he had to "do it through me because I now represent them." Picketing was in progress at the time of the hearing on October 10 and 13.

The record also shows that two representatives of the Union, on three separate occasions after picketing had commenced, called the Employer's president by telephone to request a private joint meeting for the purpose of discussing "the problem," without identifying what "the problem" was.³ The Employer's president testified that, during these conversations, the additional subjects discussed included: (1) the Union demands and how the Employer could meet them; (2) the kind of proposed contract, i.e., it would be that of an out-of-town agreement applicable to New Jersey, rather than the New York agreement of the Union's sister Local 155, and (3) union-contract benefits and terms which would be satisfactory to the Employer.⁴

We are satisfied upon the entire record, that the Union's present picketing is for the purpose of obtaining immediate recognition and a contract. This is evident from all the circumstances of this case, and particularly from the fact that union-contract demands and terms were discussed with the Employer, that the Employer was told it could talk to employees only through a union representative who claimed to represent them, that picket signs stated the Employer's employees were on strike and were striking for a union agreement, and that some delivery trucks were turned away from the plant without being permitted to make a delivery.⁵ In these circumstances, we find that the Union's picketing is tantamount to a present demand for recognition and its disclaimer ineffectual.⁶ Accordingly, we find 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.

³The union witnesses admitted that they did not clarify the ambiguous expression "the problem" in the conversations with the Employer. At the hearing, they explained it as having reference to the organizational claims of another union, rather than a demand for a contract by the Union.

⁴Union Business Agent Cooper testified, and the Union admits, that there was some discussion between the Employer's president and business agent, Cooper, about union contract benefits. However, the Union contends that the subject of contract was introduced by the Employer. For the purposes of this decision we find it immaterial who brought up the matter of contract benefits.

⁵We find without controlling effect the Union's contention that pickets merely endeavored to ascertain from truckdrivers the identity of their cargoes and suppliers for use in the event its organizational efforts led to recognition and contract negotiation. We note that Union Business Agent Cooper admitted he did not consider the pickets' conversations with the truckdrivers as part of the union organizational drive.

⁶See *Atlantic-Pacific Manufacturing Corporation*, 121 NLRB 783; *Jerome E. Mundy Co., Inc.*, 116 NLRB 1487; *Sweet-T-Shirts, Inc.*, 111 NLRB 377; *Francis Plating Co.*, 109 NLRB 35.

We shall therefore direct an election among the employees in the unit hereinafter found appropriate.

4. The parties agree that a unit of production and maintenance employees is appropriate but disagree as to the unit placement of the shipping clerk, the porter, and a knitter mechanic, whom the Union would include.

The shipping clerk receives and ships merchandise and supplies, maintains records related thereto, and spends about 10 percent of his time driving a truck. The porter cleans up the plant and also assists in the shipping department. We find that these employees have interests in common with the employees in the unit, and in accordance with Board policy, we shall include them in the unit.⁷

The Union would exclude the knitter mechanic solely because, unlike other employees in the unit, he is paid on a salary basis. This employee performs the same work as other employees in the unit and receives the same benefits and treatment. As difference in the manner of payment alone is no reason for exclusion⁸ and as the knitter mechanic has interests in common with other employees in the unit, we shall include him.

Accordingly, we find that the following employees at the Employer's Union City, New Jersey, sweater manufacturing plant, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: All production and maintenance employees including the shipping clerk, porter, and knitter mechanic but excluding office clerical employees, salesmen, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁷ *Jefferson Mills, Division of Kahn and Feldman, Inc.*, 120 NLRB 385 (shipping clerk); and *Gluck Bros., Inc.*, 119 NLRB 1843 (porter).

⁸ *White Provision Company*, 118 NLRB 1552, 1555.

Waldorf Instrument Company, Division of F. C. Huyck & Sons and International Union of Electrical Radio and Machine Workers, AFL-CIO, Petitioner. Case No. 2-RC-9356. December 31, 1958

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 Milton A. Shaham, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.