

Claude C. Bogardus, Sr., Claude C. Bogardus, Jr., and B. P. Bogardus d/b/a The Warsaw Furniture Mfg. Co.¹ and W. F. Breadon, Petitioner and Local 156, Upholsterers' International Union of North America, AFL-CIO.² Case No. 9-RD-232. December 31, 1959

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 Arthur P. West, 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 [Members Rodgers, Jenkins, and Fanning].

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 Petitioner, an employee of the Employer, asserts that the Union previously certified by the Board (Case No. 9-RC-3299, unpublished) on March 28, 1958, is no longer the bargaining representative of the unit as defined in Section 9(a) of the Act.³

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The unit description is in accordance with a stipulation of the parties and a prior Board determination. However, James L. French who was formerly a production and maintenance employee is now a foreman and is therefore excluded from the unit. The Employer and the Petitioner also stipulated that the employee who serves as clerk, stenographer, and bookkeeper shall be excluded from the unit.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act: All production and maintenance employees employed at the Employer's plant at Warsaw, Kentucky, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. All the employees of the Employer went out on strike on September 10, 1958, which is more than 12 months prior to the date the election in this case will be conducted. A week later the Employer wrote a letter to each striker and advised him either to return to work

¹ The Employer's name appears as amended at the hearing.

² The Union's name appears as amended at the hearing.

³ There was no appearance at the hearing on behalf of the Union although sufficient notice was given.

or be replaced. All of the strikers who did not return to work have been permanently replaced except Robert Beard, and each was advised by letter that he had been replaced. Robert Beard asked to be given his job back and the Employer offered it to him. However, Beard did not return but chose to work on a farm. As these employees were engaged in an economic strike which began more than 12 months before the election which is being directed in this case, and inasmuch as they have either been permanently replaced or chose not to return, we find that they are not eligible to vote in the election.

[Text of Direction of Election omitted from publication.]

Iowa Packing Company, Division of Swift & Company¹ and National Brotherhood of Engineers, Firemen & Power Equipment Operators,² Petitioner. *Case No. 18-RC-4039. December 31, 1959*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Richard P. O'Connell, 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 organizations involved claim to represent certain employees of the Employer.³

3. No 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.

The Petitioner seeks to sever and represent a unit of all employees in the Employer's steam and power department at its Des Moines, Iowa, plant. The Employer and the Intervenor moved to dismiss the petition contending, *inter alia*, that NBE, ostensibly organized to represent powerhouse employees, is fronting for an industrial union, National Brotherhood of Packinghouse Workers (herein called

¹ The name of the Employer appears as corrected at the hearing.

² Hereinafter called NBE.

³ The Employer and the Intervenor, United Packinghouse Workers of America, Local 89, AFL-CIO, refused to stipulate that NBE was a labor organization within the meaning of the Act. As the record shows that the purpose of NBE is to negotiate with employers on behalf of employees concerning wages, hours, and other working conditions and as it admits employees to membership, we find that NBE is a labor organization. *Stewart Die Casting Division (Bridgeport) of Stewart Warner Corporation*, 123 NLRB 447.