

required by the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By its interference with the formation and administration of C.I.M. and its contribution of support to said C.I.M., and by its failure to bargain with the Union in good faith, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

**Vogue Art Ware & China Company and United Brick & Clay Workers of America, AFL-CIO, Petitioner.** *Case No. 8-RC-3963. January 11, 1961*

### 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 Harold A. Ross, 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 Fanning and Kimball].

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 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 following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>1</sup>

All production and maintenance employees<sup>2</sup> at the Employer's Dennison, Ohio, plant, including the truckdriver-maintenance man and the plant janitor-maintenance man, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. The parties disagree as to whether certain strikers and laid-off employees should be eligible to vote. Petitioner contends that they should, and the Employer that they should not, be permitted to vote.

<sup>1</sup> The unit finding conforms with an agreement of the parties.

<sup>2</sup> The parties stipulated that janitress Mabel Weaver, who works an hour or two every other day in the evening, should not be included in the unit.

The Employer is engaged in the manufacture of artware pottery. Its operations are seasonal with production and sales running at a high level in the second and third quarters of the year and lower during the other quarters. Employees laid off during the slack periods are usually recalled when business improves.

In May 1960, the Employer laid off about 25 of its 35 employees because of poor business conditions. However, by August 6, 1960, the day of the commencement of the strike, business had improved sufficiently so that most of the laid-off employees had been recalled to work. The strike was still in progress at the time of the hearing. Apparently no replacements had been hired for the strikers.

According to the Employer, the strike has caused production to cease and orders to be canceled, and has made his financial position precarious. The Employer testified that because of the cancellation of orders, he expects the plant to operate at only 40 percent of capacity during the coming year. As a result of this expected low volume operation and certain planned improvements in efficiency, the Employer stated that he will recall only half the strikers, and he contends that strikers who will not be recalled should be ineligible to vote.

However, prospects for the Employer's business during the coming year are necessarily speculative. Before the strike, business had necessitated the recall of almost all the laid off employees. It is a seasonal business in which the slow period has already commenced, but there is no evidence, apart from the Employer's opinion, to indicate that the volume of business will not return in the coming year to that approaching the prestrike level. The business has a history of layoffs in the slow season with subsequent recalls in the busy period. Inasmuch as the Employer stated that he intends to offer employment to 20 workers at the outset of its 6-month slack season, we are confident that those employees not taken back at the termination of the strike have a reasonable expectancy of reemployment when the busy season arrives. Therefore, subject to the determinations made in the paragraphs which follow, we find that those individuals employed on the day of the strike who are not scheduled to return to work immediately on the termination of the strike are eligible to vote.

Mabel Brennan, Lois Cox, Mary Cummings, Florence Gleason, and Thelma Weaver were all laid off on May 4, and had not been recalled prior to the strike. The Employer does not intend to rehire these employees in the future because of their incompetency or lack of versatility. We find that these employees were permanently terminated and are not eligible to vote in the election.<sup>3</sup>

Ray Watson and James Fowler were probationary employees at the time of the strike. Probationary employees receive and hold their employment with a contemplation of permanent tenure, subject only

<sup>3</sup> *International Aluminum Corporation*, 117 NLRB 1221.

to the satisfactory completion of an initial trial period. They are in the same position as the other strikers whom the Employer has indicated it will be unable to rehire because of the decreased volume of business. However, as indicated above, these strikers have a reasonable expectancy of reemployment when the busy season arrives, and the probationary employees have a similar expectancy. They are therefore eligible to vote.<sup>4</sup>

The Employer planned to convert its operations from a large to a small kiln during the winter months, its normally slack period. The Employer contends that for this reason two kiln loaders will no longer be needed when production resumes. However, there is no evidence to indicate that the Employer will not revert to the use of the large kiln when operations return to their normal pattern. We find that, like the other employees whose services the Employer would require when production picks up, the two loaders have a reasonable expectancy of reemployment. They are therefore eligible to vote in the election.

The Employer has eliminated the waxing operation which caused some spoilage. We find that the employee formerly doing this work will not be recalled and is ineligible to vote.

The Employer contends that closer supervision will bring the same productivity in the finishing room with three fewer employees. He bases this on the results obtained during his personal observation of the operation for one 3-hour period. The evidence does not indicate either what the normal supervisory methods were or what they will be in the future. For this reason, the expected results are presently speculative. We shall permit all finishing room employees to vote.

Viola Armstrong was recalled on August 5. The Employer says that he will not recall her after the strike because she is receiving social security benefits and cannot work full-time. The choice of working full-time or not lies with the employee, and inasmuch as she may choose to forgo her social security benefits, we shall allow her to vote in the election, subject to challenge.

Burt Mahaffey is a part-time employee who gave notice that he was quitting on September 15, 1960, to enter college. Since his employment has already terminated, we find that he is not eligible to vote.

Ella Mae Heavilin was recalled from layoff status on August 6, 1960, but did not return to work because of the picket line. The Employer now states that she will not be recalled again because she lacks versatility. However, her recall on August 6 indicates that she was a desirable employee. We find that she is eligible to vote.

John McMann was discharged on August 5 for bad work. Since no unfair labor practice charge has been filed on his behalf and the Em-

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<sup>4</sup> *David S. Pearl, et. al., d/b/a National Torch Tip Company, 107 NLRB 1271.*

ployer does not intend to rehire him, we find that he was permanently discharged and is ineligible to vote in the election.

Mrs. Frank Septer and Mrs. Mildred Terakedis left their employment with the Employer on August 5, 1960, and filed an unfair labor practice charge alleging that they had been discriminatorily discharged. The Regional Director has dismissed the charge. We find that since these two individuals terminated their employment with the Employer and were not discriminatorily discharged, they are not eligible to vote.<sup>5</sup>

[Text of Direction of Election omitted from publication.]

<sup>5</sup> *Colonial Provision Company, Inc.*, 112 NLRB 1056.

**Vulcanized Rubber and Plastics Company, Inc.<sup>1</sup> and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, Petitioner.** *Case No. 4-RC-4172. January 11, 1961*

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 Morris Mogerma, 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. 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 represent in a single unit all office clerical, plant clerical and laboratory employees, excluding all other employees, confidential secretaries, time-study engineers, salesmen, inspectors, professional employees, foremen, guards, and supervisors as defined in the Act. Alternatively, the Petitioner is willing to represent the employees involved herein in three separate units of (a) office clerical employees, (b) plant clerical employees, and (c) technical

<sup>1</sup> The name of the Employer appears as amended at the hearing.