

Farah Manufacturing Company, Inc. and Amalgamated Clothing Workers of America, AFL-CIO, Petitioner Case 28-RC-2023

September 22, 1970

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Robert E. Harding. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 28, this case was transferred to the National Labor Relations Board for decision. Both the Employer and the Petitioner have filed briefs.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby confirmed.

Upon the entire record in this case, including the briefs filed herein, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reason.

4. The Employer is a Texas corporation engaged in the manufacture and distribution of men's and boys' trousers. Its operations are conducted at three locations in El Paso, and one location in San Antonio, Texas, which is approximately 600 miles from El Paso. It employs over 6,000 persons, excluding management and supervisors, professional employees, guards, and office clerical employees, at its El Paso

locations.² Petitioner seeks a unit limited to all full-time and regular part-time employees employed in the shipping and warehouse department located in the Gateway Main building at the Employer's facilities at 8889 Gateway Boulevard West, El Paso, Texas, including plant clericals, receiving employees, return clerks and cleanup men but excluding all office clerical and professional employees, confidential employees, interviewers, production and maintenance employees, machine shop employees, print shop employees,³ clinic employees, cafeteria employees, receiving employees east of the plant's main corridor, inspectors, over-the-road truck drivers, local truck drivers, bus drivers, temporary and casual employees, guards, watchmen, and supervisors as defined in the Act.⁴

The Employer contends that such unit limited to only a segment of its integrated facility is clearly inappropriate. The Employer further contends that the Petitioner's desire for the above unit is too restrictive in scope and is based solely upon the extent of organization which, as a controlling factor in the Board's determination, is prohibited by the Act. Further, in view of statements by its counsel made at the hearing and set forth in its brief, it appears that the ultimate position of the Employer is that the only appropriate unit would consist of at least all of its plants located in El Paso. The Petitioner states that it will participate in an election among the employees only in the unit it seeks with some minor variations which it declined to elaborate upon for purposes of an alternative unit.

The record shows that at the Gateway facility out of approximately 3,000 employees about 280-300 work in jobs which the Petitioner seeks to include in its unit. As previously indicated, these employees work in Phase I of three Phases in the main building. All raw material, principally rolls of cloth, is received in Phase III at the east end of the main building. The material is there inspected and cut at which time it is shipped to other El Paso facilities (Gateway Main, Third Street, or Paisano) or to San Antonio,

² These El Paso plants include the Third Street plant where 1,300 are employed, the Paisano plant, 2,000 employees, and its Gateway facility, which consists of three buildings, northwest building, machine shop and Gateway Main, in which buildings approximately 3,000 are employed

³ The parties stipulate that these employees should be excluded

⁴ The Gateway Main building is approximately 2,000 feet long and 400 feet wide, and consists of three sections, Phase I which was an existing structure into which the Employer moved part of its operations in 1965, Phase II was an additional section built onto Phase I in 1966-67, the two Phases are separated by a 20 foot corridor Phase III was built in 1968. All three building sections or phases, as they are referred to in the record, are under the same roof. The employees sought in the petition work in Phase I of Gateway Main. It is noted that there are employees, other than those in Phase I, who are performing shipping and warehouse functions who are permanently assigned to Phase III whom the Petitioner would not include in the unit sought

¹ Petitioner has also filed a motion requesting that the Board take official notice of the entire record in Cases 28-CA-1886 and 28-CA-1977. Inasmuch as the record adequately sets forth the facts necessary for the Board to make a determination of the unit issue in this representation proceeding, we deny the motion

for the completion of sewing operations. The sewn garments from all plants are then returned to the Gateway Main building for final processing. These goods reenter Gateway Main at the shipping and receiving area in Phase III from which they leave and are then transported to a floor storage area in Phase II where they await the next operations, pressing and oven-curing. When the goods come out of the ovens they are once again separated by style and numbers in order to ease and speed the work of attaching labels. After labeling, the finished goods are moved, either by Phase I or Phase II employees into Phase I for another counting, and separation, by size, color, and style, preparatory to storing. They are then taken by stockers to a storage area in Phase I where they are stored on shelves until there is a customer order calling for them. Customer orders, which specify size, color, style, and quality, are given to order pullers who go into the shelves and select the trousers designated for movement to another work distribution area. From the work-distribution area the goods are assigned to various packing tables where they are hand separated by style and color. A final visual inspection is made, loose threads are clipped off and defective merchandise removed. The trousers are checked against the customer order and packed in cartons. The cartons are then sent to a shipping area where they are stenciled, and bills of lading and truck manifests are prepared and attached to the cartons. The cartons are then loaded onto trucks and shipped out.

From the time the employees in the petitioned-for group enter the premises they follow the same routine as other Gateway Main employees. They punch a timeclock used by other employees, and their work area is regularly shared with the print shop employees and some office employees and is frequently entered by employees and supervisors from Phases II and III. A number of the requested employees, as part of their normal duties, travel into Phases II and III for goods, supplies and materials, and others are temporarily assigned there or even to other buildings. All employees use the same health, rest, and cafeteria facilities.

The record further shows that there are employees both outside and inside the Petitioner's requested unit who regularly and as part of their permanently assigned jobs perform traditional receiving, warehousing, and shipping duties. Phase III employees receive and store rolls of cloth just as Phase I employees receive and store finished goods. They select rolls of cloth for cutting orders just as Phase I employees select finished goods for customer orders. During the annual inventory they count rolls of cloth at the same time the finished goods are being counted

in Phase I. They also ship rolls of cloth following the same packing, weighing, and stenciling procedures that Phase I employees follow in shipping finished goods. The separation processes performed in Phase I when finished goods are received from Phase II are paralleled by the separation processes performed by Phase II employees prior to shipment for selling and preparatory to the label-attaching operation. Phase II sewing employees operate the machine that bags white pants in the plastic in which they are stored and shipped. This function is closely akin to the packaging functions performed by Phase I employees and was formerly performed by Phase I employees.

Aside from the similarities of duties also performed by employees outside the unit sought, the record further shows that at various times during the year employees are pooled from all of the Employer's facilities for such purposes as inventory, sample work, label-changing operations for irregulars, price changes, and major painting or maintenance work.

In addition to the interchange and similarity of duties performed by employees in other than the petitioned-for Unit, the record shows that on occasion there have been permanent transfers into and out of Phase I. In the 15-month period from January 1, 1969, through March 31, 1970, there were 21 permanent transfers of employees into, and 9 out of, the petitioned-for group.⁵

Further, although the Petitioner basically seeks a unit of all shipping and receiving employees in Phase I of the Gateway Main building, it also would include some employees—store-returns clerks, some label printers, "clean-up men", label attachers—whose duties cannot be identified as receiving, warehousing, or shipping functions; while excluding Phase III shipping and receiving employees, Phase III order pullers, and Phase II baggers and loaders, shippers, separators, and checkers throughout all facilities of the Employer who perform similar duties in receiving, warehousing and shipping.

In view of the foregoing, and all the facts as disclosed in the record, we are persuaded that the requested group does not possess a degree of functional distinctness and autonomy which would warrant a finding that they have a separate community of interest apart from the other employees. We find, therefore, that the unit sought is too narrow in scope to be

⁵ During the hearing the Petitioner alleged that the evidence as to permanent transfers should be ignored as such transfers were effectuated in an effort to defeat the present unit claim. The Petitioner adduced no evidence in support of this allegation. However, we note that the number of transfers substantially increased after the advent of union activity.

appropriate.⁶ Accordingly, as the Petitioner does not seek and has specifically excluded from consideration whether certain employees should be included in a broader appropriate unit, we shall dismiss the petition herein.

ORDER

It is hereby ordered that the petition in Case 28-RC-2023 be, and it hereby is, dismissed.

⁶ Compare *Riker Laboratories*, 156 NLRB 1099