

Afro Jobbing & Manufacturing Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Petitioner. Case 7-RC-9984

October 20, 1970

DECISION AND DIRECTION OF ELECTION

CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Theodore C. Niforos. Following the hearing, this case was transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, the Petitioner filed a brief.

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.

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, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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 record establishes, and we find in accord with the stipulation of the parties, that the following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer, including shipping and receiving employees, truckdrivers and plant clerical employees, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Petitioner would include six trainees whose employment is sponsored by a manpower training program established pursuant to the Manpower Development and Training Act of 1964. The program involved here is administered by the Petitioner and is designed to

train the hard-core unemployed. Issues have been raised as to the appropriateness of including the trainees in the unit on grounds that (1) Petitioner's functions in connection with the overall training program may have resulted in a disabling conflict of interest precluding representation of the trainee-beneficiaries of the program, or (2) the trainees, whose hourly wage rates are subsidized through Federal funds, may not possess a sufficient community of interest with other production and maintenance workers to warrant their inclusion.

The facts show that Petitioner's program is designed to recruit and train the hard-core unemployed as described below: Under contracts with the Department of Labor, the Petitioner recruits both employers and prospective trainees to participate in the program. Participating employers agree, pursuant to a contract called a consortium, to provide a certain number of openings that are filled by trainees after being interviewed and accepted for training by the Petitioner. However, employers are free to fill vacancies by themselves recruiting the hard-core unemployed. In addition, the employer is not obligated under the consortium to accept a prospective trainee referred by Petitioner. Once accepted by an employer the Petitioner has no control over the trainee's employment tenure or conditions during training. The training last from 9 months to a year.¹ After completion of training it is the expectation of all participants that the trainee will continue as a permanent employee with the employer.

While in training, the wages of the trainees are subsidized through funds set aside for the program by the Federal Government. The employer furnishes monthly reports on trainee complement and work schedules which are then used as a basis of computation by the Federal Government for refunding employers agreed percentages of salaries paid. The Petitioner is sole conduit for the channelling of such data and disbursements which, to the Employer here, are made at the agreed current rate of \$11.90 per 8-hour day per trainee through checks signed by the Petitioner.

Considering all the foregoing circumstances, we are not persuaded that Petitioner's functions under the program will result in a disabling conflict of interest which precludes it from representing the trainees.² Petitioner's role in referring qualified applicants is in a sense a hiring hall function, and its role in forwarding Federal funds is, as indicated, largely mechanical. Accordingly, and as the trainees share the same working conditions as other employees and are

¹ This Employer's contract under the program is referred to as the MA-4. Under it, in addition to the on-the-job training provided by the Employer, the trainees receive 1-day per week classroom instruction from the Petitioner, which consists of their being taught basic education and job

attitudes. The contract known as OJT, not here involved, provides for on-the-job training only.

² Cf. *Bausch & Lomb Optical Co.*, 108 NLRB 1555.

expected to be retained in permanent positions after completion of their training, we are satisfied that they possess a sufficient community of interest to warrant their inclusion in the production and maintenance unit.³ For these reasons, we find that these trainees

³ See e.g., *Westbrook Manufacturing Company*, 72 NLRB 851, 852-853, *Reslink and Wiggers Motors*, 87 NLRB 126, 127

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility

are appropriately a part of the unit and are eligible to vote in the election directed herein.

[Direction of election⁴ omitted from publication.]

list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 7 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.