Endicott Johnson de Puerto Rico, Inc. *and* **United Steelworkers of America, AFL–CIO, Petitioner and Sindicato de Trabajadores Packinghouse, United Packinghouse Workers of America, AFL–CIO, District No. 9 of Puerto Rico, Intervenor.** Case 24–RC–3422

August 21, 1968

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

On May 3, 1968, the Regional Director for Region 24 issued a Decision and Order in the above-entitled proceeding in which he dismissed the petition as premature, "without prejudice to the Petitioner filing a new petition towards the end of 1968 when it is expected that the Employer will have a more representative and substantial working force." Thereafter, the Petitioner filed a timely request for review of the Regional Director's Decision on the ground that he departed from officially reported Board precedent. The Employer filed a statement in opposition to the request for review.

On June 6, 1968, the National Labor Relations Board by telegraphic order granted the request for review.

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

The Board has considered the entire record in this case with respect to the issues under review, including the positions of the parties as stated in the request for review and the opposition thereto, and makes the following findings:

The Employer is engaged in the manufacture and sale of shoes. In 1966, a representative of its parent, Endicott Johnson Company, submitted a plan to the Puerto Rico Industrial Development Corp. (Fomento) for the construction of two plants for the production of shoes in Puerto Rico. Fomento thereafter allocated a tract of 12-1/2 acres of land near Aguadilla.

As found by the Regional Director, construction of the first plant was begun in December 1966 and completed in July 1967. Thereupon, production of four types of shoes commenced with 50 employees. During September and October 1967, the Employer hired about 100 additional employees for such production. In November and December 1967, the Employer began to produce two more types of shoes and hired another 50 employees for the purpose. By the end of 1967 and continuing until the hearing date of April 9, 1968, the Employer had a complement of approximately 200 employees in 115 assigned job classifications engaged in the production of six types of shoes. The Employer stated at the hearing that it had definite plans to add about 50 employees near the end of May 1968 to produce two more types of shoes, to add 60 more employees in October 1968 to produce two other types of shoes, and 50 more by the end of the year to work on another two additional types of shoes. Summing up, the Employer asserted that by the end of 1968 it would definitely have at least 500 employees at the first plant working in 250 job classifications producing 12 different types of shoes. The Employer's general manager, Ed M. Hawley, testified that the second plant would be connected with the first by a warehouse and that the Employer planned to hire 600 employees to work in the second plant in 110 "new job classifications" producing eight other types of shoes. No estimate was given of the date when the second plant would be in full operation.

The Regional Director concluded that the present complement was not a representative and substantial one, because at the time of the hearing the Employer had 200 employees working in 115 job classifications and had definite plans to expand by adding more employees and new job classifications involving additional skills at a regular pace every other month until the end of 1968 when there would be over 500 employees in 250 job classifications. The Petitioner contends that the Employer's job titles should not be viewed as separate job classifications and that there is no record support for the Regional Director's finding that new job titles planned for the future will require new skills. We find merit in the Petitioner's contention.

The Employer's shoe assembly plant is subdivided into six functional departments: cutting, stitching, hand sewing, lasting, bottoming, and dry and pack. It appears that most of the employees engaged in shoe assembly are paid on an incentive basis. According to the Employer's piecework numerical index of shoe assembly job titles planned for the operations at full production, there will be about 386 job titles for the anticipated total complement of some 1,100 employees. However, it appears from our examination of this list of job titles that they are designed to describe distinct operations in the assembly of the various types of shoes to be produced for purposes of applying the Em-

ployer's incentive system[1] rather than necessarily to describe separate and distinct job classifications in terms of types of skills possessed by its employees.[2]

Furthermore, we find nothing in the record to indicate that the new job titles planned by the Employer as additional types of shoes are produced will necessarily involve new job classifications in terms of skills. In the circumstances, we are satisfied that, despite the planned expansion for the operations involved, the complement at the present time is representative and substantial for purposes of directing an immediate election.[3] We find, therefore, contrary to the Regional Director, that a question exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

We find, in accord with the Petitioner's request, that 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.[4]

> All production and maintenance employees employed by the Employer at its factory at Barrio Palmas, Aguadilla, Puerto Rico, excluding all office clerical employees, guards, and supervisors, as defined in the Act.

[Direction of Election[5] omitted from publication.]

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[1] E g , the following job titles appear to involve stitching, stitch gusset to vamp, stitch reverse close, stitch rib puritan, stitch sole (imitation), stitch (zig-zag) (cushion cover to insole), stitch pocket outside (wax thread), stitch pocket outside (dry thread), stitch pocket (wax thread), stitch tip to tongue, stitch facing to gusset, stitch vamp to middle sole, stitch collar (first row), stitch leather butt onto vamp lining, stitch piping, stitch stripping, stitch webbing, stitch cover to sock lining (Singer Post), stitch upper to sock lining (Singer Post), stitch piping (no needle), skip stitch (AMF), fitt and stitch corset, stitch butted O S Parts (Singer Zig Zag machine), stitch label (nonautomatic), stitch gusset eyelet row, stitch tape (Herringbone), stitch outsole (Littleway), stitch outsole (Goodyear), stitch tip (wing), stitch tip (straight), stitch lmt (Singer) nonfunctional, stitch lmt (Union Special) (nonfunctional), stitch vamp (ornamental), stitch cutout or hole stitch, stitch outsole (McKay), stitch moccasin (Goodyear or Union Lock), stitch lining facing (Zig Zag), stitch collar facing (Army), stitch top facing (roll), stitch tong backer or lining, stitch sole (Union lock stitch or puritan), top or edge stitch, binding, stitch and fold, stitch and turn–braid or leather

[2] We note that the *Dictionary of Occupational Titles, Vol 1, Definitions of Titles* (3d ed , 1965), U S Dept of Labor, pp 654–655, carries only 24 titles within the shoe industry

[3] See *The American Brass Company*, 120 NLRB 1276, 1280–81, *Vickers, Incorporated*, 117 NLRB 1767 The cases cited by the Regional Director are factually distinguishable The case of *General Extrusion Company, Inc* , 121 NLRB 1165, relied on by the Employer to support the Regional Director's Decision, is also inapposite The criteria set forth in *General Extrusion* are applicable to contract-bar issues and were not intended to govern cases like the instant one involving an expanding unit, where the issue is whether the present complement is sufficiently representative and substantial to warrant holding an immediate election

[4] The Intervenor was in accord with the Petitioner's unit request

[5] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 24 within 7 days after the date of this Decision on Review 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 *Excelsior Underwear Inc* , 156 NLRB 1236 However, in *N L R B v Wyman-Gordon Co* , 397 F 2d 394, the Court of Appeals for the First Circuit, while indicating approval of the substance of the Board's *Excelsior* decision, held that the requirement of the furnishing of an eligibility list is void because it was not adopted in conformity with the provisions of Section 4 of the Administrative Procedure Act (5 U S C Sec 553) While noting our disagreement with *Wyman-Gordon*, we shall in deference to the First Circuit modify our procedures in elections conducted within the territorial jurisdiction of that circuit where an employer refuses to furnish the eligibility list In such cases, until the propriety of the Board's procedure in adopting the *Excelsior* requirement has been finally determined, we shall not issue a subpena for the production of the list, nor shall we seek court enforcement of the requirement, and upon the filing of timely objections on the ground an election was conducted without the list, the objections will be held by the Regional Office until such time as the propriety of the Board's procedure in adopting the *Excelsior* rule has been finally resolved