

C. P. Clare and Company¹ and Teamsters Local 310, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 28-RC-2130

June 25, 1971

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Samuel Slaff of the National Labor Relations Board.

Following the hearing and pursuant to Section 102.67 of National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 28, this case was transferred to the Board for decision. Thereafter, the Petitioner and the Employer each filed briefs.

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.² They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. C. P. Clare and Company,³ a wholly owned subsidiary of General Instrument Corporation, is a Delaware corporation engaged in the manufacture and sale of electromechanical products at various locations. Its principal office is located in Chicago, Illinois. C. P. Clare de Mexico, S. A. de C. V.,⁴ a wholly owned corporate subsidiary of C. P. Clare, operates an electromechanical products manufacturing plant in Nogales, Sonora, Mexico.

¹ The petition listed "C. P. Clare Warehouse" as the Employer and all the documents in this proceeding to date have borne that name. In view of our finding that the Employer is "C. P. Clare and Company" and not "C. P. Clare de Mexico, S. A. de C. V.," as contended by the latter firm, we have changed the case title accordingly, and hereby amend the papers in this case to read, "C. P. Clare and Company" wherever the Employer is incorrectly denominated "C. P. Clare Warehouse."

² While not raised as an issue at the hearing, in its brief the Employer contends that C. P. Clare and Company was not notified of this proceeding or joined as a party. The record reveals that a copy of the notice of hearing was sent by certified mail to attorney Philip D. Goodman, in Chicago, Illinois, on January 8, 1971, and that he appeared on behalf of "C. P. Clare Warehouse" at the hearing. A copy of the notice was also sent by ordinary mail to Mr. Clark Shannon in Nogales, Arizona, and he appeared on behalf of C. P. Clare and Company even though he is vice president and general manager of C. P. Clare de Mexico, a wholly owned subsidiary of C. P. Clare and Company. We find that C. P. Clare and Company was notified of this proceeding, appeared, and is party hereto.

³ Hereinafter C. P. Clare.

⁴ Hereinafter C. P. Clare de Mexico.

The Nogales, Arizona, warehouse involved in this proceeding annually receives goods valued in excess of \$50,000 from outside the State of Arizona. These goods are shipped from the warehouse across the United States-Mexico border to Nogales, Mexico, a distance of about 3 miles, where they are used as raw materials in C. P. Clare de Mexico's plant. The Mexican firm ships its finished products directly to customers in the United States, bypassing entirely the Arizona warehouse. The Arizona warehouse is leased by C. P. Clare, but C. P. Clare de Mexico reimburses the American company for the rent it pays.

The three warehouse employees whom the Petitioner seeks to represent were hired by C. P. Clare de Mexico's personnel manager after interviews in Mexico. The employees are Mexican nationals working in the United States under "green card" permits. When he was rehired in July 1970, employee Luis Ibarra received a letter from Mr. C. P. Clare on C. P. Clare stationery which welcomed Ibarra to the American organization. The warehouse employees are paid by C. P. Clare check drawn on an American bank. United States income and social security taxes are withheld from their earnings. C. P. Clare de Mexico reimburses C. P. Clare for the wages paid the warehouse employees.

The warehouse employees receive goods destined for the Mexican plant that are shipped from various points throughout the United States. They inspect the shipment upon delivery by common carrier and note its arrival in an inventory control book. Ibarra, the most senior warehouse employee, supplies C. P. Clare de Mexico with data required by it for the preparation of export-import documents covering the raw materials the Mexican firm imports. Also, Ibarra receives daily telephone orders from Mexico that tell the warehouse employees which goods to ship that day. The raw materials are transported across the border in trucks driven by employees of C. P. Clare de Mexico. However, C. P. Clare owns one of the two trucks used by the Mexican company and the other truck is registered in both the United States and Mexico. There is no evidence of interchange or transfer between the Arizona warehouse employees and any of C. P. Clare de Mexico's employees.

C. P. Clare de Mexico argues that it employs the warehousemen and that the Board does not have jurisdiction in this case because the unit sought consists of foreign nationals employed by a foreign corporation. It contends too that the American parent corporation, over whom C. P. Clare de Mexico concedes the Board has jurisdiction, has no authority to affect the warehouse employees' working conditions. We find no merit in these arguments.

The warehouse employees sought by the Petitioner clearly are employed by C. P. Clare, an American corporation over whom the Board has jurisdiction. When hired, they were welcomed to the "team" by C. P. Clare's president in a letter on C. P. Clare stationery. The employees' paychecks are drawn on C. P. Clare's American bank account and United States social security and income taxes are withheld therefrom.

The Board has asserted jurisdiction over foreign nationals employed within the United States under special work permits, such as the "green card," on numerous occasions.⁵ In *McCulloch v. Sociedad Nacional de Marineros de Honduras* [*United Fruit Company*], 372 U.S. 10, the Supreme Court held that the Act was not intended to apply to foreign registered vessels employing alien seamen. Contrary to the Employer's assertion, that case is inapplicable to the instant situation which involves employees of an American corporation who work solely within the United States. *Herbert Harvey, Inc.*, 171 NLRB No. 36, also relied upon by the Employer, is likewise inapposite since there the Board declined to assert jurisdiction over the World Bank because that international organization enjoys "the privileges and immunities from the laws of the sovereignty in which it is located customarily extended to such organizations," and no such considerations pertain in the instant proceeding. The Employer also relies upon *British Rail-International Inc.*, 163 NLRB 721, where the Board deemed it inappropriate to assert jurisdiction over certain employees working in the United States for an American corporation because that employer was a wholly owned subsidiary of the British Railways Board, an agency of the British government. Clearly, C. P. Clare's situation differs from that found in *British Rail*.

Accordingly, we find from the above that, inasmuch as the employees involved in this proceeding are employed within the United States by C. P. Clare, 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 Petitioner is a labor organization claiming to represent certain employees of the Employer.

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

4. The Petitioner seeks to represent a unit of ware-

housemen, checkers, and platform people employed at the Employer's Nogales, Arizona, warehouse. C. P. Clare de Mexico argues that due to the complete integration of the American and Mexican operations a unit limited to the employees at the Nogales, Arizona, warehouse is not appropriate.

Separate units of warehouse employees have been found appropriate by the Board on numerous occasions.⁶ The record reveals nothing to warrant a different conclusion here. The Arizona warehouse employees work in a separate location doing tasks unlike those of the manufacturing plant employees. The warehouse operates independently of the Mexican plant and, in fact, currently performs the same customs function for C. P. Clare de Mexico as an independent broker in Nogales, Arizona, formerly performed.

The Employer contends that Luis Ibarra is a supervisor within the meaning of the Act and therefore should be excluded from any unit found appropriate. We disagree.

Ibarra, who was initially hired in January 1970 as the only warehouse employee, left the Employer's employ in April, but was rehired in July at an increased wage even though he remained the sole warehouse employee. When the Employer hired the two warehousemen whom it now contends Ibarra supervises, Ibarra's wage rate was not increased and, in fact, it has remained constant to date despite his asserted greater responsibilities.

Ibarra works alongside the other warehousemen loading and unloading trucks and spend 2-3 hours a day preparing papers for inventory control, import-export documents, etc. He also supplies information to C. P. Clare de Mexico so it can prepare customs documents and receives orders from the Mexican firm for the shipment of goods to Mexico. He passes these orders along to his coworkers, who with Ibarra prepare the shipments.

Ibarra has no authority to hire, suspend, lay off, transfer, reward, discipline, or discharge any of the men with whom he works, nor has he effectively recommended such action to management. He routinely directs the two warehousemen in the performance of repetitive shipping and receiving tasks.

We find from the above that Luis Ibarra is not a supervisor within the meaning of Section 2(11) of the Act.

⁵ *Great Northern Paper Company*, 171 NLRB No. 120; *Scott Paper Company*, 171 NLRB No. 117; *Brown Company*, 109 NLRB 173.

⁶ *Garrett Supply Company*, 165 NLRB 561; *California Physicians' Service d/b/a California Blue Shield*, 178 NLRB No. 116; *Pacific Abrasive Supply Co.*, 182 NLRB No. 48.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All warehousemen, checkers, and platform people

⁷ 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; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the

employed at the Employer's Nogales, Arizona, warehouse, excluding all other employees, guards, watchmen, and supervisors as defined in the Act. [Direction of Election⁷ omitted from publication.]

Employer with the Regional Director for Region 28 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.