

**Advertising Displays Corp.¹ and International Union,
United Automobile, Aerospace and Agricultural Im-
plement Workers of America (UAW),² Petitioner.
Case 9-RC-9930**

August 27, 1973

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 Eric D. Fields of the National Labor Relations Board on February 14, 1973.

Thereafter, the Regional Director for Region 9 issued a Decision and Direction of Election in which he found, *inter alia*, that the employees classified as "temporary employees" would be permitted to vote subject to challenge. In so doing, he rejected the stipulation of the parties to exclude the "temporary employees" and stated that he made no finding as to their eligibility because there was insufficient and conflicting evidence in the record at that time to support the stipulation or to make a determination as to the eligibility of these individuals with any degree of accuracy. On February 28, 1973, the Employer filed a motion for reconsideration in which it urged that the Regional Director vacate the Decision and Direction of Election and make a finding as to the eligibility of these employees prior to any election, because the number of such individuals utilized by the Employer averaged approximately 50 per day and the unit sought by the Petitioner included only approximately 35 regular full-time employees.

Thereafter, on March 7, 1973, the Regional Director issued an order vacating the Decision and Direction of Election, an order remanding the proceeding for further hearing, and a notice of hearing, on the basis of Employer's motion for reconsideration. A further hearing, and a notice of hearing, on the basis of Employer's motion for reconsideration. A further hearing was conducted on March 13 and April 25, 1973, before Hearing Officer James H. Stephens.

Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, by direction of the Acting Regional Director of Region 9, the case was transferred to the Board for decision.

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

The Hearing Officers' rulings made at the hearings are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs, 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 certain 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:

All production and maintenance employees employed by the Employer at its Dayton, Ohio, location, excluding temporary employees,³ office clerical employees, professional employees, guards, and supervisors⁴ as defined in the Act. [Direction of Election and *Excelsior* footnote omitted from publication.]

³ The parties stipulated to exclude a classification referred to at the hearing as temporary help. The hearing was remanded, as noted above, in order to determine the status of employees furnished the Employer by temporary help agencies. The record shows that, in addition to its regular full-time complement of 34 employees, the Employer also utilizes the services of individuals furnished to it on a temporary basis by two manpower agencies, Circle Management Services, Extra Help Division, and Labor Power, Incorporated. The number of these temporary employees needed is determined and furnished on a daily basis, and varies according to business conditions, pursuant to oral agreements terminable at the will of the parties. Approximately 60 to 65 such temporary employees are furnished daily to the Employer. Some of these employees worked during each of the 26 weeks preceding March 1, 1973, but the majority worked less than 3 weeks during the past 26 weeks. Although the temporary employees work alongside the regular full-time employees and are under the same supervision, they are assigned unskilled work mainly in the assembly and packaging departments. They are paid by Circle Management or Labor Power and receive no fringe benefits, except those required by law. In view of the foregoing and because both parties have agreed to exclude the temporary employees from the unit, we shall exclude them from the unit, *Bachman Uxbridge Worsted Corporation (Uxbridge Mill)*, 109 NLRB 868, fn 9 at 870.

⁴ Both the Petitioner and the Employer agree that *Barbara Ogan, Nancy Horvel, and Jerry Seidensteck*, line supervisors in the finishing department, are statutory supervisors. The record shows that the line supervisors have the authority to reprimand employees, settle grievances on their own, and release employees from work if they are ill. They receive a salary, whereas unit employees are hourly paid. Moreover, the line supervisors wear uniforms different from those worn by unit employees and they regularly attend management meetings. Based on the foregoing, we find that the line supervisors are supervisors as defined in Sec 2(11) of the Act. We exclude them from the unit.

The parties stipulated, and the record shows, that *Sidney Malvin*, plant manager, *Robert Reigelsberger*, manager, press and die cutting department; *Lucian Thompson* and *Donald Cox*, foremen, press and die cutting department, *Ronald Carrier*, manager, finishing department, *Gary Reigelsberger* and *Charles Brown*, foremen, finishing department; *Hugh Bunn*, supervisor, shipping and receiving department; *Stanley Muse*, assistant supervisor, shipping and receiving department, and *Phil Kindred*, supervisor, maintenance department, are supervisors within the meaning of Sec. 2(11) of the Act. Accordingly, we exclude them from the unit.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.