

**Elastic Poly Horizons Corporation and Amalgamated Clothing and Textile Union, AFL-CIO, Petitioner.**  
Case 11-RC-4158

March 17, 1977

**DECISION AND DIRECTION**

BY MEMBERS JENKINS, PENELLO, AND  
WALTHER

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 11 on April 7, 1976,<sup>1</sup> a secret ballot election was held under the supervision of the aforementioned Regional Director on April 29. Upon conclusion of the election, a tally of ballots was furnished the parties showing that of the approximately 38 eligible voters 18 cast valid votes for the Petitioner, 14 cast valid votes against the Petitioner, and 6 ballots were challenged. The challenged ballots were sufficient in number to affect the results of the election.

On June 28, the Regional Director issued a Report on Challenges in which he concluded that the challenges to the ballots of Marilyn Marsh and Kerris Avant were without merit and recommended that they be opened and counted. As the counting of these two ballots would not be decisive, the Regional Director further recommended that they not be opened and counted until a determination was made with respect to the four remaining challenged ballots.

The Regional Director concluded that the issues relating to the challenges to the ballots of Katie Avant, Lonnie Cribb, Larry Joe Haselden, and Barbara Cox could best be resolved by record testimony at a hearing before a duly designated Hearing Officer.

No exceptions to the Regional Director's report having been filed by either party, on July 27, the Board adopted the Regional Director's recommendations as contained in his report.

On August 9, the Regional Director issued a notice of hearing which directed the Hearing Officer to take testimony for the purpose of resolving the issues raised by the challenges to the ballots of Katie Avant, Lonnie Cribb, Larry Joe Haselden, and Barbara Cox. The Regional Director's notice of hearing further directed the Hearing Officer to prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues.

Pursuant to the Board's order directing a hearing, and the Regional Director's notice of hearing, a

hearing was held before Hearing Officer Ronald L. Yost on August 25, 26, and 27, at Florence, South Carolina. The Petitioner and Employer were represented by counsel, both of whom participated in the hearing. Both parties were afforded an opportunity to be fully heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Thereafter, on November 26, 1976, the Hearing Officer issued and served on the parties his Report and Recommendations on Challenges wherein he recommended that the challenges to the ballots cast by Cribb, Haselden, and Cox be overruled and that the said ballots be opened and counted, but that the challenge to the ballot cast by Avant be sustained. Thereafter, the Employer filed exceptions to the Hearing Officer's recommendation regarding the Avant ballot.

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 Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

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

1. The Employer is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction in this proceeding.
2. The labor organization 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 parties stipulated and we find that the following employees constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Employer's Hemingway, South Carolina, plant but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. The Board has considered the Hearing Officer's report, the exceptions and brief, and the entire record in this case and hereby adopts the Hearing Officer's findings, conclusions, and recommendations only to the extent consistent herewith.

We do not agree with the Hearing Officer's finding that Katie Avant is a supervisor within the meaning of the Act. The record shows that Avant does not

<sup>1</sup> All dates herein, unless otherwise stated, occur in 1976.

have the authority to hire, lay off, transfer, promote, reward, or discharge employees. Avant works in the put-up and inspection department. Like other employees, she is paid on an hourly basis and earns only 10 cents more an hour than the next highest paid employee in the department. Her benefits are the same as those of the other employees, and she takes her breaks in the lunchroom with them.

Each day Avant picks up the production slips from the machines and takes them to the front office where she obtains the work assignments in the form of shipping orders. From these orders and her inventory she knows what is in stock and what has to be put up and finished and sees that the required styles are brought from the stockroom. When this task is completed, she goes into the plant and works wherever she is needed, performing the same tasks as other employees.

In the afternoon she is responsible for getting the shipments out. Thus, when she receives the shipping orders from the front office, she sorts out the boxes of finished goods, gets the boxes to the ramp, and leaves them there for the truckdrivers to pick them up. She has been granted permission by management to work overtime, if needed, to get the shipments out.

In his report, the Hearing Officer states that the above-mentioned duties appear to require the exercise of independent judgment. We do not agree. In this connection, we note that the written work assignments which are given to her each day from the front office include a "prioritizing" of the days' shipments. The decision to fill an order from stock or to have it manufactured can be determined from a review of stock records. Her decision to work overtime is dictated by the need to get shipments out. Accordingly, we do not find that performance of the above-mentioned duties are indicative of supervisory status.

The Hearing Officer also found that Avant has asked employees to work overtime, granted time off, and initialed employee timecards. With regard to overtime, the evidence establishes that there are times when the need arises to have employees work overtime. When this occurs, Plant Manager Foshee makes the decision and on occasion has had Avant ask other employees to work late. While it is true, as the Hearing Officer found, that Avant asks employees to work overtime, in these circumstances she is

merely a conduit for relaying Foshee's wishes. Accordingly, this factor does not indicate supervisory authority in Avant.

The Hearing Officer credited the testimony of employees McCowan and Parrott that Avant is the one to whom they go to get time off or to verify their timecards if they have not been punched or are otherwise incorrect. Avant's testimony, however, is that in the case of McCowan seeing her about time off she would merely relay his message to Foshee who makes the decision. Parrott's testimony was that, while she would speak to Avant if she wanted to take a few hours off, if she wanted more than a day off Avant did not give her an answer immediately. She did not know whether or not Avant had to go to Foshee for the authority to let her off in such case. In these circumstances, we do not believe that Avant's minor role with these two employees in their getting time off and in verifying their timecards should be given more than little weight as indicia of supervisory authority. Thus, in view of the fact that the evidence fails to show that she was given any authority by management, the fact that her interests appear similar to those of the other employees, and the fact that she lacked the other customary indicia of supervisory authority to a substantial degree, we find Avant is an employee within the meaning of the Act. Accordingly, we shall overrule the challenge to the ballot cast by her in the election.

#### DIRECTION

It is hereby directed that, as part of the investigation to ascertain representation for the purpose of collective bargaining among the employees of the Elastic Poly Horizons Corporation, Hemingway, South Carolina, in the stipulated unit, the Regional Director for Region 11 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, amended, within 10 days from the date of this Decision and Direction open and count the ballots of Katie Avant, Lonnie Cribb, Larry Joe Haselden, Barbara Cox, Marilyn Marsh, and Kerris Avant and cause to be served on the parties a revised tally of ballots including therein the count of said challenged ballots, upon the basis of which he shall issue the appropriate certification.