In the Matter of WALNUT RIDGE MANUFACTURING COMPANY, INC., EMPLOYER *and* UNITED GARMENT WORKERS OF AMERICA, A. F. L., PETITIONER

Case No. 32–RC–54.—Decided December 9, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-man panel consisting of the undersigned Board Members.*

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner claims to represent 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 following employees at the Employer's trousers factory constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production employees, excluding office and clerical employees, timekeepers, guards [1] and all supervisory employees as defined in the Act.

5. The Employer contends that the petition is prematurely filed because of the expanding nature of the Employer's business. The plant commenced operation March 8, 1948, with 7 employees. At the time

*Houston, Reynolds, and Murdock.

[1] There was some dispute as to the status of an employee who worked on the night shift. His primary duties are the protection of plant property and the prevention of unauthorized entry into the plant. One-fifth of his time is devoted to janitorial duties. We find that he is a guard within the meaning of Section 9 (b) (3) of the Act and should be excluded from the unit found appropriate.

of the hearing on October 14 there were 68 employees working and 1 full line of machines going. The Employer's plant superintendent testified that he intends eventually to have 5 lines in all working at this plant, using 350 workers. He said that he will start hiring for the 2nd line in 6 to 8 weeks from the date of the hearing and complete that hiring in 4 to 5 weeks. He predicts that it will be 4 to 6 months after he gets the 2nd line quota filled before the workers will constitute a permanent, stabilized staff. At that time, he will go on to hire for the 3rd line. This procedure will be followed through the 5 lines except that the plant superintendent expects the staffing and training of lines 3, 4, and 5 to proceed faster than lines 1 and 2. At this rate, it will certainly be a minimum of 15 months before the plant is completely staffed assuming that the Employer eventually does reach capacity production.

There will be no new operations or skills added. Each line is a duplicate of the others. The present employees are a representative group of the future anticipated complement.

In a situation such as is here presented, we have, in the past, applied the formula evolved in the *Aluminum Company* case [2] and in ordering an immediate election have provided in our Direction that a new petition would be entertained 6 months after any certification issued pursuant thereto upon a showing that the number of employees in the appropriate unit had more than doubled and that the Petitioner then represented a substantial number of employees in the enlarged unit. However, we are precluded from further application of the foregoing formula by Section 9 (c) (3) of the Act, as amended, which provides that the Board shall not conduct more than one valid election per year in any bargaining unit. We are, nevertheless, reluctant to deprive the employees presently employed of an opportunity to select a bargaining representative, since their number is substantial and they constitute a representative group of the ultimate personnel complement. An additional reason to provide for an election in the near future is the uncertainty as to just when the expansion will take place, it being influenced by factors somewhat out of the control of the Employer, such as the availability of a working force, the speed with which the new employees absorb training, and the presence of sufficient orders to keep an expanded force going. Indeed, there may be some question whether any expansion will take place.[3]

[2] *Matter of Aluminum Company of America*, 52 N L R. B. 1040

[3] There was a strike in the plant in June ending in July. Before the strike there were employed about 120 employees At the time of the hearing in October there were only 68 employees working The reason given by the Employer's plant superintendent was that he had found that he had increased his force more rapidly than it was possible to adequately train the newcomers and that he now intended to take it more slowly.

Therefore we shall direct an election to be held.[4] However, inasmuch as the Employer contemplates some immediate expansion, we think that the election should be postponed until the Employer has its second line staffed but in no event should it be postponed later than January 31, 1949.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted on a date to be selected by the Regional Director subject to the instructions set forth in paragraph 5, above, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of the election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by the United Garment Workers of America, A. F. L.

[4] See *Matter of Western Electric Co., Inc.*, 76 N. L. R. B. 400.