

Lamcraft Industries, Inc.,¹ and Leslie China, Inc. and Local 18-B Furniture and Bedding Workers Union, United Furniture Workers of America (AFL-CIO), Petitioner. *Case No. 73-RC-6866. April 8, 1960*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act,² hearings were held before Hubert J. Sigal, hearing officer. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

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

1. Lamcraft Industries, Inc., and Leslie China, Inc., Illinois corporations are engaged in the manufacture of floor, table, and pole lamps, and the decoration of chinaware and the manufacture of lampshades, respectively. During 1958, Lamcraft's shipments to points outside the State were valued in excess of \$50,000. Leslie sells its entire output of lampshades directly to Lamcraft and they are moved from one to the other of their adjoining buildings in Chicago through a common passageway which is open in the normal course of activities. Officials of both corporations are Phillip Harris, president; Irving Harris, vice president; and Marvin Harris, secretary-treasurer. In view of the entire record, reflecting common ownership, common management, and common labor relations policies, we find that the aforementioned corporations constitute an integrated enterprise and that they are for jurisdictional as well as unit purposes a single Employer within the meaning of the Act.³ In these circumstances, we find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as corrected on the record.

² The Intervenor, Local 743, Warehouse and Mail Order Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, moved to dismiss the petition on the ground that its appeal from the Regional Director's dismissal of its charges alleging violations of Section 8(a)(2) and (1) of the Act is still pending before the Regional Director. We deny the motion because the Board does not postpone elections in such circumstances. *California Spray-Chemical Corporation*, 123 NLRB 1224. Nor do we find merit in the Intervenor's contention that Petitioner's showing of interest is tainted by such alleged unlawful employer-assistance. Showing of interest is an administrative matter not subject to litigation in representation proceedings. Further, the contention relates to unfair labor practices, which are not properly litigable in a representation proceeding. *Southeast Portland Drug Association*, 124 NLRB 467.

³ *Frank S. Owens Co., et al.*, 118 NLRB 1619.

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

4. The parties agree that a single unit of all production and maintenance employees of Lampcraft Industries, Inc., and of Leslie China Co., Inc., is appropriate. They also agree that William Marcus, foreman of Leslie China, is a supervisor within the meaning of the Act and should be excluded from the unit. The Employer and the Intervenor contend that George Ward is foreman of Lampcraft Industries, occupying a position comparable to that of Marcus in Leslie China, and is a supervisor within the meaning of the Act. They also contend that department heads, John Fletcher and Louis Lashinsky of Leslie China, and Geraldine Womak, Chestly Rickman, Joseph Packer, Booker Langston, and Edwin Harris, of Lampcraft Industries, are supervisors within the meaning of the Act. Petitioner would include Ward and each of the department heads in the unit.

Each of the two plants employs approximately 25 to 26 employees, including the department heads, Ward, and Marcus. Both Vice President Irving Harris and Secretary-Treasurer Marvin Harris actively supervise the operations of the plants spending substantial portions of their time in the plants. They do the hiring. They also grant wage increases, which are generally granted on individual merit, rather than an overall basis. Most wage increases are initiated by employee requests, and the Harrises make their determinations without consultation with the department heads.

William Marcus is, as indicated, foreman of Leslie China. He is salaried and the record indicates that he exercises supervisory authority as to all departments of the corporation. Marvin Harris testified that George Ward performs the same role and exercises the same authority as to Lampcraft Industries. This testimony was corroborated in material respects by the testimony of Edwin Harris—no relation to Marvin Harris—the only witness called by Petitioner for the purpose of disputing the supervisory status of Ward and the seven department heads. Though Ward is not paid on a salary basis, his hourly rate of \$2.25 an hour is substantially higher than that of any other employee. In these circumstances we find that Ward is a supervisor within the meaning of the Act and we shall exclude him from the unit.

The department heads spend almost all of their time in the regular production work of their departments, generally performing the most

⁴The Intervenor entered into an agreement with Lampcraft Industries to be effective from April 1, 1958, until March 31, 1961. The Petition was filed on November 4, 1959. As it was filed within 150 days but more than 60 days prior to the second anniversary of the Intervenor's 3-year contract with the Employer, that contract is not a bar. See *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990.

difficult tasks of the department. They are hourly paid and are required to punch a timeclock. In addition to their production work, they are required to fill out daily production reports, bring to the attention of supervisory officials the need for additional supplies and materials as the occasion demands, and train new employees. However, the record indicates that not much training is required in most instances and that other employees also help in training new employees. The department heads also attend meetings with Marvin and Irving Harris, George Ward, and William Marcus at which production and performance problems are discussed. Though such meetings were at one time held at the beginning of each month, the record indicates that no meetings were held between May and the latter part of November 1959, when such a meeting was held shortly before the hearing. These meetings are held after working hours and the department heads receive overtime pay for their attendance.

Marvin Harris testified that the department heads have been given, and have exercised, the authority effectively to recommend the hiring, discharge, and disciplining of employees, and that they direct the work of the employees in their departments. However, he was unable to cite examples of the exercise of such authority on the part of all of the department heads, and the few examples given occurred at irregular intervals. Nor does it appear that the department heads, other than Edwin Harris, were ever explicitly told that they had such authority. At most, it appears that at the November production meeting Marvin Harris told them that they were responsible for the work of their departments, and that any complaints brought up by employees "should be worked out by them, *if it isn't anything too great.*"

On the basis of the foregoing, we find that the department heads, while functioning as group leaders or leadmen, are not supervisors within the meaning of the Act. The evidence, while indicating that they are charged with some leadership responsibilities, does not force a conclusion that they are supervisors within the meaning of the Act. The only delegation of authority to which the Employer could point was a delegation to handle any matter "which isn't anything too great." The instances of actual exercise of supervisory authority involved only a few of the department heads and occurred at irregular intervals. Moreover, it is apparent that, in addition to George Ward and William Marcus, the plant foreman, Marvin and Irving Harris take an active part in the supervision of the operations of the two plants, to such an extent that they grant merit wage increases without consultation with the department heads. Such bypassing of the department heads, who are most familiar with the work of the employees in the departments, is, in our view, incompatible with the claimed delegation of authority to the department heads to responsibly direct

the work of the employees in the departments, and to effectively recommend significant personnel action. In view of these factors, and because the ratio of supervisors to employees would otherwise be inordinately high,⁵ we find that the department heads, except for Edwin Harris, are not supervisors within the meaning of the Act, and we shall include them in the unit.

Edwin Harris appears to occupy a special position. Though he heads the smallest department, there is some indication that he substitutes for George Ward in the latter's absence. Further, it appears that prior to the hearing, Marvin Harris told him to discharge a particular employee⁶ that day, but that Edwin Harris did not do so. When asked why, by Marvin Harris, Edwin stated that it was because he had not seen the employee do anything wrong that day. Marvin Harris then said "You see that it is done. You have got to. I want you to initiate some authority." On the following Monday, the last day of the hearing, the employee was still at work. It thus appears that, in contrast to the other department heads, the Employer has specifically clothed Edwin Harris with supervisory authority, and that in deciding, for himself, not to follow his Employer's instructions to discharge a particular employee, Edwin Harris, in fact, exercised independent judgment in the matter, which is only compatible with the existence of true supervisory responsibility. In these circumstances, we find that, at the time of the hearing, Edwin Harris was a supervisor within the meaning of the Act, and we shall exclude him from the unit.

In view of the foregoing, we find that the following employees at the Employer's plant in Chicago, Illinois, 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, including Geraldine Womak, Chestly Rickman, Joseph Packer, Booker Langston, John Fletcher, and Louis Lashinsky, of both Lampcraft Industries, Inc., and Leslie China, Inc., but excluding office clerical employees, professional employees, guards, and supervisors, including William Marcus, George Ward, and Edwin Harris, as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ If the 7 department heads were to be found to be supervisors, along with Irving and Marvin Harris, William Marcus, and George Ward, the ratio would be approximately 8 supervisors to 20 employees in Lampcraft and 5 supervisors to 23 employees in Leslie. In computing the supervisory ratio, Marvin and Irving Harris must be included as supervisors in both plants. See *Southern Airways Company*, 124 NLRB 749.

⁶ Marvin Harris testified that sometime previous Edwin Harris had recommended to him that the employee in question be discharged because he caused too much trouble and that Marvin Harris told Edwin Harris that the employee would be discharged when a replacement could be found. Edwin Harris denied making such a recommendation. He does not, however, dispute the events of the Thursday prior to the hearing.