

General Cable Corporation and International Brotherhood of Electrical Workers, AFL-CIO, CLC, Petitioner. Case 26-RC-3037

October 22, 1968

DECISION AND DIRECTION OF THIRD ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

Based on a petition filed on October 27, 1967, and pursuant to a Stipulation for Certification upon Consent Election approved by the Regional Director for Region 26 on November 30, 1967, an election by secret ballot was held on December 12, 1967, among certain employees of the Employer at Hot Springs, Arkansas. None of the choices received a majority of the valid votes cast, and pursuant to Section 102.70 of the National Labor Relations Board Rules and Regulations, and Statements of Procedures, Series 8, as amended, a runoff election was conducted on December 27, 1967. As 2 challenged ballots were determinative and as objections were filed by the Intervenor, United Steelworkers of America, AFL-CIO, CLC, the Regional Director issued his Report on Challenges and Objections on February 2, 1968.

The National Labor Relations Board issued its Decision and Direction on April 19, 1968, and ordered that the 2 challenged ballots be opened and counted and that a third election be conducted in the event a revised tally of ballots showed that the Intervenor had not received a majority of the valid votes cast. After the 2 challenged ballots were counted, the tally revealed that the Petitioner and Intervenor each received 12 votes out of the 24 valid ballots cast. On May 14, 1968, the Employer filed a Request to Withdraw from the Consent Agreement. As none of these elections was decisive and in view of other unusual circumstances, the Regional Director issued a Notice of Hearing on the original petition. Pursuant thereto, a hearing was held before William K. Harvey, Hearing Officer of the National Labor Relations Board. Thereafter, the Employer and Intervenor 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. They are hereby affirmed.

Upon the entire record in this case, 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 Petitioner and Intervenor are labor organizations 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 Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All production and maintenance employees employed at the Employer's plant located at Garland County Industrial Park, Hot Springs, Arkansas, excluding all office clerical employees, laboratory employees, professional employees, guards, and supervisors as defined in the Act.

5. The Employer requests that the petition be dismissed because its operations are in the process of extensive expansion. There were 69 employees in 12 job classifications at the time of the hearing on June 10, 1968. Projections of the Employer call for a complement of 220 employees in 24 job classifications by February 1969. The Petitioner and Intervenor assert that an immediate election should be held, contending that the *General Extrusion* rule,¹ requiring employment of 30 percent of the eventual employee complement and, establishment of 50 percent of the job classifications has been met.

As the Board has previously held, the criteria set forth in *General Extrusion* are applicable to contract bar issues, and were not intended to govern determinations of whether a present complement of employees is sufficiently representative and substantial to warrant holding an immediate election. Rather, the appropriate test for purposes of directing an immediate election is whether the employees at the time of holding an election constitute a substantial and representative segment of the complement to be employed within the foreseeable future. Thus, in *Endicott Johnson*,² the Board directed an election where employees were working in less than 50 percent of the planned job classifications.³ The Employer's projections of its expansion plans disclose that in August 1968 the Employer was expected to have approximately 110 employees in 18 job classifications and in September 1968 it expected to have approximately 131 employees working in 20 job classifications. Under these circumstances, we are satisfied that the employee complement both at the present time and at the time the election will be held

¹ *General Extrusion Company, Inc.*, 121 NLRB 1165.

² See, *Endicott Johnson De Puerto Rico, Inc.*, 172 NLRB No. 194, fn. 3.

³ Here, at the time of the hearing, employees constituting 31

percent of the contemplated work force were employed in 50 percent of the planned job classifications. Therefore, even if the *General Extrusion* formulae were applicable, that test has been met.

is representative and substantial for purposes of directing an immediate election.⁴

[Text of Direction of Third Election⁵ omitted from publication.]

⁴ It is immaterial in this case that some employees may still be considered to be trainees by the Employer

⁵ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 26 within 7 days after the new date of issuance of the Notice of Third Election by the Regional Director. 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. *Excelsior Underwear Inc.*, 156 NLRB 1236