

Yellowstone International Mailing, Inc. and Manufacturing, Production, & Service Workers Union Local 24, AFL-CIO, Petitioner. Case 13-RC-20399

September 27, 2000

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN AND HURTGEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent parts of which are attached as an appendix), as well as the Employer's brief in response to the request for review. The request for review is granted.

Based on the undisputed facts as set forth by the Regional Director, we find, contrary to the Regional Director, that the Employer's current workforce is substantial and representative of the complement of employees to be employed in the reasonably foreseeable future, such that an immediate election is appropriate.

It is well settled that the Board will direct an immediate election, notwithstanding an employer's plan to expand its workforce, when the employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future. See *Toto Industries (Atlanta)*, 323 NLRB 645 (1997); *General Cable Corp.*, 173 NLRB 251 (1968). In general, the Board finds an existing complement of employees to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994); see, e.g., *Gerlach Meat Co.*, 192 NLRB 559 (1971). In the instant case, even assuming that the Employer's projected expansion by the first quarter of 2001 is not too indefinite, speculative, or remote in time to serve as the standard against which to measure the present complement of employees,¹ and assuming that all of the employees hired as a result of the expansion would be included in the unit, the Employer's current unit workforce (113 employees) would constitute 38 percent of the ultimate projected workforce of approximately 300 employees at the new facility.² Additionally, as it is undisputed that there will be no new job categories created by the Employer, the current employees are employed in

100 percent of the ultimate job classifications. Under these circumstances, we conclude that the Employer's present workforce constitutes a substantial and representative complement of employees, notwithstanding the Employer's anticipated expansion of its operations.

Although the Employer contends, citing *Cooper International*, 205 NLRB 1057 (1973), that the number of its current employees who will ultimately continue their employment with the Employer at the relocated facility is uncertain, such that it is impossible to ascertain whether a substantial and representative complement of employees exists, we conclude that under the facts of this case, it is reasonable to infer that at least a substantial number—if not virtually all—of the current employees will remain employed with the Employer following the relocation. Significantly, the Employer has indicated that it plans to extend offers of employment to all of its current employees, and the facts here suggest a strong likelihood that a considerable proportion of the current employees will accept the offers of employment. These facts include the following: (1) the new facility is only approximately 1-1/2 miles from the Employer's existing facility; (2) the nature of the work and functions performed will not change; and (3) there will be no hiatus between the closing of the current facility and opening of the new facility.

In this regard, we find this case distinguishable from *Cooper International*, supra. In *Cooper*, the Board dismissed a union's petition for an election based on the employer's imminent relocation of its operations³ and the lack of evidence indicating that a considerable proportion of its existing employee complement would accept employment at the new facility. In contrast to the instant case, however, the employer in *Cooper* averred that, although it intended to offer employment to all of its current employees, it was unlikely that a substantial number of them would accept employment at the new facility because most of the employees—who lived 18 to 25 miles from the new facility—did not own cars, and public transportation between the towns in which the old and new facilities were located was inadequate. Id. Under those circumstances, the Board concluded that no purpose would be served by holding an immediate election. Id. at 1058.

Although the Board in *Cooper* indicated that it would not attempt to determine the number of employees who might accept employment at the relocated facility, we find that the strikingly different facts of the instant case

¹ Cf. *Wittman Steel Mills, Inc.*, 253 NLRB 320 (1980); *Bekaert Steel Wire Corp.*, 189 NLRB 561 (1971).

² Comparatively, the Employer's current workforce constitutes 71–75 percent of the Employer's projected complement of employees as of November 1, 2000.

³ In *Cooper*, according to the executed purchase agreement submitted by the employer, the employer's relocation of its operations would occur approximately 2-1/2 months from the date of the Regional Director's Decision and Direction of Election, and within approximately a week of the Board's decision.

lead to a determination that a substantial or even overwhelming number of the Employer's employees almost certainly will remain as part of the ultimate workforce after the relocation. Moreover, the Board's decision in *Cooper* "does not establish an exclusive and dispositive means for the exercise of discretion by the Board in implementing its case-by-case approach" to determining the existence of a substantial and representative complement of employees. *NLRB v. AAA Alternator Rebuilders, Inc.*, 980 F.2d 1395, 1399 (11th Cir. 1993) (stating that one means for the Board to assess whether a substantial and representative complement exists is to make a projection based on current data suggesting that the premove "complement will be representative of the unit as it will be composed at the new location").

For all the foregoing reasons, we conclude that under the circumstances of this case, the Employer's current employees constitute a substantial and representative complement of the Employer's projected workforce following its relocation, such that an immediate election is appropriate.

ORDER

The Regional Director's Decision and Order is reversed, and the case is remanded to the Regional Director for further appropriate action.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer in this case contends that the petition is premature because it is currently in the process of relocating its operations, as well as undergoing corporate changes that will result in the expansion of the work force. As a result of the relocation and future expansion, the Employer argues that there cannot be a substantial and representative complement of employees at this point in time. The Petitioner contends that there is a representative complement of employees, and an election should proceed without delay.

FACTS

The Employer operates a business engaged in the furnishing of international mailing and distribution of published and printed materials. It is a company wholly owned by Deutsche-Post. The Employer's headquarters are located at 2375 Pratt Boulevard, Elk Grove Village, Illinois, where they employ approximately 135 employees, approximately 113 of which are in the unit at issue. The Employer also has a smaller facility located in Hackensack, New Jersey. The Company is scheduled to move from its present location into a larger facility located approximately a mile and a half away at 1800-1872 Brummel Drive, Elk Grove Village, Illinois. The move will occur on or before the first of November 2000. The lease for this facility has not yet been finalized, but the move is imminent. Negotiations have been ongoing, and the lease currently needs only the proper signatures, according to the Employer.

The Employer has not yet offered the employees at its 2375 Pratt Boulevard location employment at the new Brummel Drive facility, though it plans to do so. As no employees have yet been offered positions at the new facility, no evidence was provided as to how many of these employees would accept employment at the new facility.

The Employer testified at hearing that the move into a larger facility is caused by a need to accommodate a larger work force. The expansion in work force stems from Deutsche-Post's plans to combine its companies into a single enterprise under the corporate umbrella of Deutsche-Post Global Mail. There will be three "hubs" in the United States, located in California, New Jersey, and in Chicago, Illinois. The Employer will make up the Chicago hub. Currently, the Employer is primarily involved in press distribution and mailing. However, after the consolidation, three additional product lines will be added, those being direct mail, e-commerce, and parcels.

Due to the expansion, the Employer anticipates that its work force will increase to around 150-160 employees on or before November 1, 2000. It also anticipates that by the end of the first quarter of 2001, around 300 employees will be employed. Current management will be retained after the relocation.

In regard to the specific impact the consolidation will have on the current employees, all will be offered employment in the new facility. Additionally, the same functions that are being performed now will be performed after the consolidation of companies. The Employer testified that there will be no new job categories created. In fact, the functions that are being presently performed by the employees at issue already include direct mail and functions related to e-commerce and parcel shipping. The main difference is that these functions are to be expanded so that a larger labor force will be required. The only additional job skill the Employer could articulate involved computer skills, which was envisioned as data input of inventory and shipping destination.

ANALYSIS

The Employer is relocating its operations into a new facility, and has not yet offered any current employees positions at that new facility. Under these circumstances, the Board will not speculate as to the probability of whether a substantial and representative amount of current employees will accept employment at the new facility. In *Cooper International*, 205 NLRB 1057 (1973), the Board dealt with a strikingly similar factual situation, stating:

... in view of the imminence of the transfer of operations and the absence of evidence showing that the Employer has as yet offered, and that a considerable proportion of the unit employees have indicated that they would accept, such employment, no useful purpose would be served by processing the petition at this time. We, therefore, shall dismiss the petition ... without prejudice to the filing of a new petition ... when the ... facility is in operation and a substantial and representative working force is there employed. [205 NLRB at 1058.]

In the instant case, uncontested evidence demonstrates that the Employer has not yet offered the employees at the current

facility employment at the new facility. Further, no evidence was presented on how many current employees will accept employment at the new facility once offered and, as noted above, the Board has made it clear that it will not speculate on such matters.⁵

The Union contends that the current employees constitute a substantial representative complement of projected future employees; however, it does not address either the relocation issue or the issue that the employees have not been offered employment at the new facility. Additionally, the Union's argument that the Employer's plans are merely conjecture or speculative is not supported by the facts. The Employer is moving into a newer, larger facility to accommodate its expanding work force within the next 4 months. The lease agreement for the new

⁵ While the record shows that the Employer in the instant case intends to offer all current employees employment at the new facility, the Employer in *Cooper* also intended to offer all current employees employment at its new facility. The Board stated that it would not attempt to ascertain the probabilities with respect to whether a substantial and representative complement of employees would accept employment. *Cooper*, 205 NLRB 1057 at 1058.

location has been under negotiation,⁶ and uncontested testimony confirmed that presently only the proper signatures are needed for completion of the leasing agreement. Further, there is no cause for finding conjecture or speculation based on the fact that a final leasing agreement was not produced at time of hearing, as evidence need only demonstrate that a relocation move is imminent. See *Cooper*, 205 NLRB at 1058. No evidence was produced to suggest that the move would not take place as planned.⁷

Based on the foregoing, the processing of the instant petition is premature.

⁶ A copy of a lease agreement from these negotiations was produced at hearing.

⁷ The instant situation is factually distinguishable from cases cited by the Petitioner. For example, *Endicott Johnson De Puerto Rico*, 172 NLRB 1676 (1968), involved a second building on the same site, and no estimate was provided as to the date when the second building would be in full operation. The instant situation involves definite plans for relocation to a new site, on or before November 1, 2000. As such, the plans here are not indefinite or speculative as contemplated in the cases cited by Petitioner.