

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

KEYSTONE POWDERED METAL COMPANY ^{1/}

Employer

and

Case 9-RC-17226

INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, SALARIED, MACHINE &
FURNITURE WORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. 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.

^{1/} The name of the Employer appears as amended at the hearing.

5. The Employer, a corporation, is engaged in the manufacture of powdered metal component products at its Columbus, Ohio facility, where it currently employs approximately 181 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all production and maintenance employees, including equipment and secondary set-up operators and trainers, secondary employees, operators, technicians, electricians, millwrights, mechanics, machinists, shipping employees, tool crib attendants, janitors, inspectors, and plant clerical employees, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act. The Employer is in agreement that the unit sought by the Petitioner is appropriate for purposes of collective bargaining. The Employer, however, asserts that approximately 98 employees are slated for permanent layoff between May 1 and 5, 1999, and that those individuals are ineligible to vote in an election because they do not possess any reasonable expectancy of recall. Contrary to the Employer, the Petitioner maintains that if an employee is working on the day of the election he/she is eligible to vote regardless of whether the employee is scheduled for layoff. The record reflects that there are no other issues. Moreover, neither party contends that the scheduled layoff gives rise to a contracting unit issue that would necessitate the dismissal of the petition or, at a minimum, a delay in the scheduling of an election. In any event, it is clear under well-established Board precedent that "a mere reduction in the number of employees in a unit is not in and of itself sufficient reason for postponing an election." *Owen Steel Company, Inc.*, 92 NLRB 1335 (1951) (citation omitted). See also, *Douglas Motors Corp.*, 128 NLRB 307, 308 (1960). In *Owen Steel*, a reduction of approximately half of the employer's work force for economic reasons did not prevent or delay an election as the remaining employees constituted a substantial and representative complement. Here, the proposed reduction in the Employer's employee complement is akin to that contemplated in *Owen Steel*. In agreement with the parties and established precedent, I find that the employees who will remain following any layoff will constitute a substantial and representative complement. I conclude, therefore, that the instant facts do not present a contracting unit which warrants delaying an election.

The Employer is engaged in the manufacture and sale of powdered metal parts from two facilities located in Pennsylvania, one in North Carolina, and the Columbus facility which has been in operation since 1987. The Employer purchases the powdered metals which it utilizes in a "raw" powdered state with a consistency similar to fine sand. At the Columbus facility, the Employer utilizes compacting presses and furnaces to mold, shape, and sinter (heat) the powdered metal into various parts, including bearings, gears, sprockets, and forged components, used in the automotive, appliance, and outdoor equipment industry. Its largest customer is Torrington Industries, a supplier of camshafts to Ford Motor Company. The Torrington contract represents approximately 65 percent of the Employer's business at the Columbus facility. At its Columbus, Ohio facility, the Employer has two principal production areas known as Departments 18 and 19. Department 19 manufactures forged components for Torrington's camshafts. Other areas of the Columbus facility are also involved in the production of parts for Torrington.

In December 1998, Torrington notified the Employer that Ford was canceling its contract with Torrington. Accordingly, Torrington cancelled its contract with the Employer. The new supplier of camshafts to Ford does not use powdered metal technology in the manufacture of component parts. The record reflects that as of the date of the hearing, the Employer has also

been unsuccessful in obtaining other powdered metal business to replace the lost work. The Employer has also considered transferring work from its other facilities to replace at least some of the lost work; however, this option merely was under consideration as of the date of the hearing.

In mid-February 1999, the Employer learned from Torrington the number of pieces of each part that Torrington required for completion of its outstanding contractual commitments to Ford. The Employer then utilized this information to develop a timetable for the completion of the Torrington work and the concomitant layoff of hourly personnel. The Employer then sent out 101 Worker Adjustment and Retraining Notification (WARN) Act notices to the hourly employees whom it had slated for layoff. The Employer projected that it would actually need to lay off 98 employees. However, the Employer sent out three additional notices to provide it with a cushion to avoid possible liability for employee wages under the WARN Act. The WARN Act notices specified to the employees to whom they were sent that the Employer expected to lay them off between May 7 and 21, 1999.

As the completion of the Torrington work progressed, the Employer was able to determine that the work would be completed by May 1. It moved up the timetable for layoffs accordingly, and employees are now scheduled to be permanently laid off on May 1, 2 or 5, depending on the ending date for their shift rotation or weekly schedule. The record reflects, however, that the identity of those employees who will ultimately be laid off remains uncertain. Thus, the Employer may elect to lay off fewer than 98 of the employees who received WARN Act notices if employees who are not slated for layoff quit their employment prior to the occurrence of layoffs. Presumably a reduction in the present employee complement through discharge would also reduce the number of employees who would be laid off. Additionally, the Employer is considering permitting employees to elect a voluntary layoff regardless of whether or not they received a WARN Act notification. It appears that if the Employer elects to offer a voluntary layoff option, and such is elected by one or more employees who are not currently slated for layoff, then fewer of the WARN Act notice recipients would need to be laid off. It is noted that laid off employees retain recall rights for 1 to 3 years depending on their length of service. Finally, the Employer has had only one other layoff at its Columbus facility, a temporary layoff in 1994 of about 3 weeks' duration resulting from Torrington's possession of an excess stockpile of product. The employees scheduled for layoff have been notified that it is permanent and the Employer is engaging in efforts to assist the employees in obtaining unemployment and work with other employers.

ANALYSIS AND CONCLUSION:

In *North General Hospital*, 314 NLRB 14, 15 (1994), the Board reaffirmed long-standing precedent that:

[T]he eligibility of voters in Board elections is to be determined on the basis of employment status of each voter during the eligibility period and at the time of the election. *Accordingly, any change in employment status subsequent to the election is immaterial with regard to eligibility in an election.* Citing, *Farmers Rendering Co.*, 115 NLRB 1014, 1016 (1956).

The facts regarding the layoff of employees in *North General* are quite similar to those in the subject case. In *North General*, the employer sought to exclude from a unit of physicians and dentists those physicians employed in its radiology department on the basis that the department was scheduled to close in the very near future. The physicians in that department were told prior to the election that they were going to be permanently laid off because the radiology work was being subcontracted. In accordance with existing precedent, the Board held that the physicians in the radiology department were eligible to vote in the election if they had not been permanently laid off by the date of the election. In reaching this conclusion the Board stated that "the fact that they may be permanently laid off soon after the election is irrelevant to the issue of whether they are eligible to vote in that election." However, the Board noted that if the physicians were laid off by the date of the election, they would no longer be in the bargaining unit and thus would not be eligible to vote in the election. *North General Hospital*, 314 NLRB at 15 n. 6.

With respect to employees laid off before or during the eligibility period prior to the election, the Board has held that they have no expectancy of recall "[i]n the absence of evidence of past practice regarding layoffs, where an employee is given no estimate as to the duration of the layoff or any specific indication as to when, if at all, the employee will be recalled." *Apex Paper Box Co.*, 302 NLRB 67, 69 (1991); citing, *Foam Fabricators*, 273 NLRB 511 (1984). Thus, when objective factors do not support a reasonable expectancy of recall, laid off employees will be deemed ineligible to vote in an election. *Apex Paper Box Co.*, 302 NLRB at 68. In reaching a conclusion as to the eligibility of a laid off voter, "[t]he Board examines several factors ... including the employer's past experience and future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall." *Apex Paper Box Co.*, supra.

On the instant facts there is no basis to infer that the employees who are laid off by the date of the election possess any reasonable expectancy of recall. Indeed, the record shows that the Employer has been unable to replace the substantial amount of business lost as a result of the cancellation of the Torrington contract and that this particular business cannot be regained as a result of a change in the manufacturing process. Moreover, the Employer is making efforts to place employees who are projected to be laid off with other employers. Additionally, as was the case in *Apex*, there is no history of past practice regarding layoffs from which to infer that the laid off employees will be recalled and the employees were not given any estimate as to the duration of the layoff or any indication that they would ever be recalled. The fact that laid off employees may be recalled following the date of the election if certain events occur, i.e., the Employer obtains new work or other employees quit or accept a voluntary layoff, does not disturb the conclusion that as of the election they had no reasonable expectancy of recall. See, *Apex Paper Box Co.*, 302 NLRB at 68-69.

The record evidence supports a conclusion that the employees in the appropriate bargaining unit who are employed on the eligibility date and date of the election are eligible to vote. In the event certain employees have been permanently laid off prior to the election, they are ineligible to vote. See, *North General Hospital*, supra. In reaching my conclusion, I have carefully considered the arguments raised by the parties at the hearing and in their briefs. The Employer appears to argue in brief and at the hearing for a prospective application of the reasonable expectancy of recall test. In other words, the Employer appears to take the position that

regardless of whether an employee has actually been permanently laid off by the date of the election, employees, if scheduled for layoff, are ineligible to vote. A significant difficulty with the Employer's argument lies in the record evidence that at least some of those employees who received WARN Act notices may not actually be laid off depending on a variety of circumstances. Thus, in contravention of the Board's long-established, date-certain test, the Employer would have me potentially declare ineligible to vote one or more employees who were employed during the payroll period for eligibility as well as on the date of the election. None of the cases relied on by the Employer in its brief involve the application of the reasonable expectancy of recall test to employees who have not been laid off by the date of the election. In *NLRB v. Spring Arbor Distribution Co.*, 149 LRRM 2848 (6th Cir. 1995), the facts are only superficially similar to those in the subject case. In *Spring Arbor*, the Court found that the Acting Regional Director erred in concluding that the imminent layoff of nearly four-fifths of the bargaining unit following the date for a second election was merely speculative. The Court determined that as a result of this errant conclusion, the Acting Regional Director and the Board had failed to analyze whether a contracting unit issue was presented on the facts that might have resulted in a delay in the election until the layoff had transpired. The instant case does not present a contracting unit issue. Therefore, the Court's decision in *Spring Arbor* is not relevant to the disposition of the case *sub judice*. Moreover, none of the other cases relied on by the Employer stand for the proposition that employees who are slated for layoff but who have not been laid off by the date of a representation election are ineligible to vote. Those cases are, therefore, inapposite to my conclusion. Accordingly, employees in the unit on the eligibility date and date of the election are eligible to vote; but if certain employees have been permanently laid off before the election day, they are ineligible to vote in the election.

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All production and maintenance employees, including equipment and secondary set-up operators and trainers, secondary employees, operators, technicians, electricians, millwrights, mechanics, machinists, shipping employees, tool crib attendants, janitors, inspectors, and plant clerical employees employed by the Employer at its Columbus, Ohio facility; but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike

which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **April 14, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 21, 1999**.

Dated at Cincinnati, Ohio this 7th day of April 1999.

Edward C. Verst, Acting Regional Director
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