

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-SIX**

JONES PLASTIC & ENGINEERING COMPANY LLC

Employer/Petitioner

and

Case 26-RM-462

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC¹

Union

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

OVERVIEW

The Employer/Petitioner, Jones Plastic & Engineering Company, LLC, is a Kentucky corporation with an office and place of business in Camden, Tennessee, where it is engaged in the manufacture of plastic injection molded parts. The Employer filed a Petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The petition seeks an election in an existing unit of all production and maintenance employees employed by the Employer at its Camden, Tennessee facility including production operators, warehouse employees, material handlers, maintenance technicians, mold shop repair employees, mold setters, team leaders and quality assurance employees, excluding all processors, lay-out technicians, office clerical employees, guards and supervisors as defined in the Act. The Union, United Steelworkers of America, AFL-CIO-CLC, is the certified collective-bargaining representative of the employees in the unit. The Union was certified in April 2001 in case 26-RC-8242. The parties have not reached a

¹ The Petitioner's name appears as amended at hearing.

first contract and currently there is a strike at the Employer's Camden facility. Following a hearing before a hearing officer of the Board, the parties filed briefs² with me.

There are no factual issues to be resolved with respect to job classifications included and excluded from the unit. The parties stipulated at the hearing that the existing unit is an appropriate unit. The parties also stipulated that temporary employees are not part of the bargaining unit. Neither party called witnesses to present record testimony at the hearing; however, several procedural questions were raised.

I have considered the evidence and the arguments presented by the parties on each of the procedural questions raised by the Union. As discussed below, I have concluded that the Union's arguments are without merit. Accordingly, I am directing an election in a unit that consists of 84 active employees and 52 striking employees. To provide a context for my discussion of the issues, I will present in detail the arguments and the reasoning that supports each of my conclusions.

PROCEDURAL ISSUES

The Union moved for an indefinite continuance (at the hearing). The Union's reasons for seeking the continuance were: (1) there is a blocking charge pending in Case 26-CA-20687-1 and; (2) the Employer did not produce certain subpoenaed documents at the hearing.

Regarding the blocking charge contention, I take administrative notice that the charge, in Case 26-CA-20687-1, has been dismissed by this office. I also take administrative notice that the NLRB Casehandling Manual, at Section 11730.2, states that

² The Employer did not file a formal post-hearing brief but filed a letter brief instead. The extra-record information in the Union's brief has not been relied on herein.

once a blocking charge has been investigated and found to lack merit and is dismissed, the Regional Director should proceed with the processing of the representation case. I concluded that holding the pre-election representation hearing herein was appropriate³ and I reject the Union's contention that the petition should be held in abeyance.

With respect to the Union's contention concerning its subpoena, the Union served the subpoena on the Employer on July 26, 2002 for the hearing held on July 29, 2002. The subpoena is in evidence (Union Exh.1). The Union requested various types of information in nine separate paragraphs. Regarding the requests contained in paragraphs one, two, three, six, seven and eight, no documents existed. Regarding the requests in paragraphs four, five and nine, the Employer filed a motion to quash. Paragraphs four and five sought copies of agreements between the employer and other companies or entities providing security services at Camden, or providing labor to the Camden facility. Paragraph nine sought payroll records for the Camden facility for the period from March 4, 2002 to July 22, 2002. Because the parties had stipulated and agreed at the hearing to the job classifications to be included in the appropriate unit, and because the parties had stipulated that any temporary employees were not included in the unit, no unit issues remained to be resolved. The information sought was determined to be irrelevant and the motion to quash was appropriately granted.

At the hearing and in its brief, the Union argued that the Board's decision in Levitz Furniture Company of the Pacific, Inc.,⁴ required that the Employer's evidence of good faith doubt as to the Union's majority status be litigated at the hearing. Levitz does not

³ The Region will not hold an election until the Union's appeal has been decided.

⁴ 333 NLRB No. 105 (2001).

require such a result. Because the Levitz decision involved an unfair labor practice charge, the Board did not speak to the issue of whether evidence of good faith doubt should be litigated at representation hearings. In fact, the NLRB Casehandling Manual, at 11042, provides that objective considerations in support of an RM petition is a matter for administrative determination of the Regional Director and may not be litigated at the hearing.

CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
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. The labor organization involved claims to represent certain employees of the Employer.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All Production and maintenance employees employed by the Employer at its Camden, Tennessee facility, including production operators, warehouse employees, material handlers, maintenance employees, mold shop repair employees, mold setters, team leaders, and quality assurance technicians.

EXCLUDED: All processors, lay-out technicians, office and clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers of America, AFL-CIO-CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. There are approximately 136 active and striking employees eligible to vote.

B. Employer to Submit List of Eligible Voters

To ensure 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 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).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before August 15, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **August 22, 2002**. The request may **not** be filed by facsimile.

DATED at Memphis, Tennessee, this 8th day of August 2002.

/S/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

Classification Index

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420-2963; 420-5000; 420-5027