

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

GMT Corporation¹

Employer

and

International Union, United Auto Workers²

Petitioner

Case 18-RC-17149

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of production and maintenance employees employed by the Employer in its CNC, tool and die, and fabrication divisions at its facilities located in Waverly, Iowa. The Employer does not disagree with the appropriateness of the production and maintenance unit. However, it contends that the employees in the tool and die division should not be included in the unit because that division has been sold, and the Employer will terminate the employees in the division. Moreover, according to the Employer, except for six named employees, all other employees on layoff status in the CNC and fabrication divisions have no reasonable expectancy of recall, and therefore, they too are ineligible to vote. On the other hand, Petitioner contends that the tool and die employees will be laid off, and that they and all other laid off employees have a reasonable expectancy of recall, and should be eligible to vote.

¹ The Employer's name appears as amended at the hearing.

² Petitioner's name appears as amended at the hearing.

After reviewing the record, I conclude that except for six employees on layoff status identified by the parties as having a reasonable expectation of recall, no other employees on layoff status have a reasonable expectation of recall, and therefore, they are ineligible to vote.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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 herein.³
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.
5. In order to understand my conclusions, I will first summarize the record regarding the Employer's operations as of the date of the hearing. I will then review the evidence regarding the Employer's sale of the tool and die division. The third section of this decision will summarize the evidence regarding the status of employees on layoff status. Finally, I will review Board law and apply it to the facts developed in the record, in order to explain my conclusions on the issues in dispute.

³ The Employer, GMT Corporation, an Iowa corporation with an office and places of business in Waverly, Iowa, is engaged in contract machining and manufacturing services. During the preceding calendar year, a representative period, the Employer purchased and received at its Waverly, Iowa facilities goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Iowa.

The Employer's Operation

The Employer's operation is located in Waverly, Iowa. It consists of three divisions.

The CNC production machining division is involved in contract machining of castings. Its main customer is John Deere. It operates three shifts, has about 70 employees in the production and maintenance area (excluding employees on layoff status), and is located at 2112 East Bremer Avenue. Each shift has a supervisor. Of the production employees, 56 are CNC machinists. They load parts into machines, initiate programs developed by the engineering area, oversee the machining of the parts, and then unload the parts. The remaining employees provide support. They include material handlers, who deliver material to machines and take finished components from the machines to the shipping area, and maintenance employees, who maintain the Employer's equipment.

The second division is fabrication. It operates two shifts, has 18 employees in the production and maintenance area (excluding employees on layoff status), and is located at 504 First Avenue Southwest. The first shift has a supervisor, while the second shift has a lead. There are three employees on the second shift. The fabrication division is a welding operation, and mainly fabricates large frames for trucks. Its main customer is Terex, which is located in Waverly. Most of the employees in this division are welders, although there are some robotic operations and CNC machines in the fabrication division.

The Employer's third division is its tool and die operation. This division produces tools, fixtures, and dies for specialty machines, typically for customers who are installing or upgrading production lines/processes. It consists of two shifts, and is located at 2112 Bremer Avenue. According to the Employer, the production employees in this division have the highest skills, because the design requirements are more complex, because the jobs are more technical, and

because the Employer is making just one of some tool, fixture, or special machine needed by a customer so that the customer can produce its product. While the fabrication and CNC production divisions share the same manager (Jay Ranard), the tool and die division is separately managed and supervised. There is no operating relationship between the tool and die division and the remaining two divisions.

The Sale of the Tool and Die Division

On May 14, less than one week before the hearing in this matter, the Employer announced to the public the sale of its tool and die division. Evidence in the record is that the sale will close on May 30, 2003. The Employer is selling all business assets of the division, including the real property. All employees of the Employer in that division will be terminated as of the sale. The buyer, TDS Automation Inc., a division of Doerfer has committed to hiring all employees of the division. According to the Employer, all terms and conditions of the sale are finalized. A specific purchase price has not been specified, but the method of determining the purchase price is agreed upon. The purchaser can walk away from the sale only if the Employer breaches the purchase agreement or if there is a material adverse change to the business or assets being acquired, which is not further defined in the purchase agreement.

At the hearing, the Petitioner acknowledged that the sale is “bona fide” but expressed concern that the purchaser could not carry through with it. In any event, Petitioner appears to take the position that the tool and die employees will be laid off by the Employer, and have a reasonable expectancy of recall, and therefore should be eligible to vote.

Employees on Layoff Status

In addition to the employees about to be terminated due to the sale of the tool and die division, the Employer has a number of other employees on layoff status. Eleven employees employed in the tool and die division were laid off as of the date of the hearing. Their dates of layoff are between January 14 and February 23, 2003. In the CNC division, 28 employees are on layoff status. Ten of the 28 were laid off in June 2002, one in July 2002, nine in August 2002, two in September 2002, and the remaining six in February 2003. Finally, in the fabrication division, one welder was laid off on December 2, 2002.

The Employer contends that none of the laid off employees, except Roy Bill, Larry Shepard, Charles Lampson, Jay Hess, Steve Dieken and Jim Krull (all employed as CNC machinists), has a reasonable expectation of recall.⁴ In support of its position, the Employer offered the following uncontested evidence. First, the Employer points out that it has a history of laying off employees in two ways. Some layoffs are for a definite duration – that is employees being laid off are told that they are laid off for a specific period of time. For example, in the past employees have been laid off for three weeks. Other layoffs, however, are for an indefinite duration. In the last twelve months, these indefinite layoffs have been utilized. Moreover, according to the Employer, these indefinite layoffs have occurred for two reasons. First, it desired to reduce costs and make its operations more efficient, and therefore, has restructured parts of its operation. Second, it shed business that was not profitable, primarily low volume production of parts for John Deere. This occurred in June or July 2002. As noted, the Employer contends that all layoffs resulting were for an indefinite period of time, and that the supervisors

⁴ The Employer and Petitioner stipulated that these six laid off employees have a reasonable expectation of recall, and therefore, that they are eligible to vote. These six employees were employed in the CNC division prior to their layoffs and are the employees most recently laid off.

who laid off the employees were told to so advise employees. Further, according to the Employer, its handbook has a policy on layoffs, that sets forth recall rights. It states that for any employee with more than one year's employment, recall rights expire after one year on layoff. After a year, laid off employees can apply for jobs that become open, but will be considered for those jobs only as an applicant who is competing with other applicants who may have never worked for the Employer. While layoffs of employees take into account a variety of factors including skill levels and seniority, on the other hand, employees are recalled in inverse order. Thus, the most recently laid off employee is the first recalled. Finally, the Employer offered into evidence its forecasts for hiring through the end of calendar year, 2003. This forecast, put together after surveying customers regarding their needs, predicts that the Employer will hire five CNC machinists in August, one in September, with no further hiring until November, when it would hire 16 CNC division employees. This increase in employment is because the Employer anticipates 35-40% growth because of increased work from a current customer. The Employer's forecast foresees no change in staffing in the fabrication division. Thus, according to the Employer, looking at those on layoff status and at their dates of layoff, only the six named above have a reasonable expectation of recall, while the recall rights of all others will expire.

Petitioner offered the testimony of three employees laid off from the tool and die division. Two of them were laid off in January 2003 and remain on layoff status. Both testified that they viewed their layoffs as temporary because their foremen (and in one case the human resources manager) told them that the layoff was temporary and they would be recalled when there was enough work. Both were also told by the foremen that they did not have to do a job search for unemployment because of the temporary nature of the layoff. Petitioner contends therefore, that the employees were told that the layoffs were temporary. However, both also

acknowledged receiving letters from the Employer in February 2003 that state in part, “Given current market conditions, we expect your layoff to be at least 6 months.”

Petitioner also contends that in the past employees have been laid off in one division and recalled to work in another division. In support of this contention, Petitioner cites the testimony of a third employee, also laid off from the tool and die division in January, 2003, who was called back to work in the CNC division after only one week. This third employee was a material handler in the tool and die division, and moved to a similar job in CNC. In addition, the two other employees who were laid off in January 2003 testified about another time they were laid off and they and four other laid off tool and die employees were recalled to work in the CNC division. Apparently Petitioner offers this evidence to support its position that even though the tool and die division is being sold, laid off tool and die employees have a reasonable expectation of recall to the fabrication and/or CNC divisions.

Board Law on Reasonable Expectation of Recall and Its Application to the Facts

In Apex Paper Box Co., 302 NLRB 67 (1991), the Board noted that it is well established that temporarily laid off employees are eligible to vote, and that it will examine whether objective factors support a reasonable expectancy of recall in the near future, which establishes the temporary nature of the layoff. Among the factors the Board examines are an employer’s past experience and future plans, the circumstances surrounding the layoff, and what employees were told about the likelihood of recall. Id. at 68.

First, with regard to the tool and die division, Petitioner does not dispute that the division is to be sold on May 30, 2003. While Petitioner expressed some concerns that the purchaser has the ability to walk away from the sale, the record indicates that the sale is sufficiently certain.

That is, the date the sale is to be consummated is only days away, the transaction is arms length, and the sale has been announced to the public. See Larson Plywood Company, Inc., 223 NLRB 1161 (1976); Martin Marietta Aluminum, Inc., 214 NLRB 646 (1974). Petitioner also did not rebut Employer evidence that the purchaser intends to offer jobs to all current tool and die division employees, or the Employer's statement that it intends to terminate those employees. Thus, there is no credible evidence that tool and die employees will even be laid off. Rather, it appears that their employment relationship with the Employer will end. I conclude, therefore, that with regard to employees in the tool and die division, whether they were on layoff status or working as of the date of the hearing, that they will be terminated by the Employer when the division is sold, that they will not be laid off, and that they will not have a reasonable expectation of recall following their termination.

Except for the six individuals on layoff stipulated by the parties to have a reasonable expectation of recall, I also conclude that employees on layoff status in the CNC and fabrication divisions do not have a reasonable expectancy of recall. In reaching this conclusion, I note that the Employer's evidence that the layoffs resulted from changes in its production process and its decision to cease low volume production work that was insufficiently profitable is un rebutted. This evidence suggests that the layoffs are for an indefinite duration. In addition, the Employer's employment forecast for the remainder of this calendar year supports the conclusion that employees on layoff status have no reasonable expectation of recall. Further, no employees on layoff status from the CNC or fabrication divisions rebutted the Employer's claim that supervisors were to tell them that the layoffs were for an indefinite time. Supporting the Employer's claim is the length of time that a number of the employees from these two divisions have been laid off. A significant number of them have been laid off for nine months or more.

While Petitioner presented the testimony of employees from the tool and die division that their foremen told them that their layoffs were temporary, no employees who were laid off from the CNC or fabrication divisions testified about their layoffs. Moreover, even the laid off tool and die employees who testified acknowledged receiving letters from the Employer stating that their layoffs would be of at least six months duration. The letters also make clear that recall is dependent on the Employer generating new business. Based on these facts, I conclude that other than the six employees identified by the parties, no other employees on layoff status have a reasonable expectation of recall. Osram Sylvania, Inc., 325 NLRB 758 (1998).

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer in its CNC and fabrication divisions at its Waverly, Iowa facilities; excluding office clerical employees, professional employees, engineering department employees, administrative employees, sales and marketing employees, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION⁵

An election by secret ballot will 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 below, including employees who did not work during that period because they were ill, on vacation or

⁵ 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 **June 11, 2003**.

temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons 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.⁶

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, United Auto Workers.

⁶ To ensure that all eligible voters 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 that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before close of business **June 4, 2003**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Signed at Minneapolis, Minnesota, this 28th day of May, 2003.

/s/ Ronald M. Sharp

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