

In the Matter of NATIONAL COLOR PRINTING COMPANY, INC., EMPLOYER
and WALTER M. ERNST, ET AL., PETITIONERS and AMALGAMATED
LITHOGRAPHERS OF AMERICA, LOCAL No. 18, UNION

Case No. 5-RD-7.—Decided July 8, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition for decertification duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The Petitioners assert that the Union is no longer the bargaining representative of the employees of the Employer as defined in Section 9 (a) of the Act.

The Union, a labor organization affiliated with the Congress of Industrial Organizations, was designated as bargaining representative of the employees in the unit described below in a consent election held under the supervision of the Regional Director for the Fifth Region on April 10, 1946.

3. A question of representation exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the mean-

¹ We disagree with the Union's contention that it was entitled to examine and challenge the Petitioner's showing of interest. We have heretofore held, in decertification cases as in certification cases, the requirement of a showing of representative interest is only an administrative device adopted to enable the Board to determine whether or not further proceedings are warranted, and is not subject to objection at the hearing. *Matter of Burry Biscuit Corporation*, 76 N. L. R. B. 640.

*Houston, Reynolds, and Gray.

ing of Section 9 (b) of the Act: All employees in the Employer's Lithograph Department, including artists, hand transferers, step and repeat plate makers, vacuum frame operators, touchers, offset pressmen, feeder operators, helpers, floor hands, and lithophotographers, but excluding office and clerical employees, all guards and watchmen, and all supervisors.

5. Since on or about November 11, 1947, an economic strike called by the Union has been in progress, although the plant has continued to operate. The Employer states that it has secured permanent replacements for some of the employees on strike, and would be able to use only two of the employees still on strike. The Union, on the other hand, charges that the Employer has been employing strikebreakers rather than permanent replacements, and that the present petition is sponsored by strikebreakers.

In accordance with previous holdings, we shall direct an immediate election, permitting all employees to participate who were employed during the pay-roll period immediately preceding the date of this Direction. All persons hired since November 11, 1947, the date of the strike, and all strikers shall be presumptively eligible to vote, subject to challenge. The challenged ballots shall not be counted unless they affect the result of the election, in which case the question as to which of these ballots shall be opened and counted will await a further investigation concerning the employment status of the affected individuals.²

DIRECTION OF ELECTION ³

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees on strike,

² *Matter of Pipe Machinery Company*, 76 N. L. R. B. 247; *Matter of Colonial Hardwood Flooring Co., Inc.*, 76 N. L. R. B. 1039

³ The fact that the Union has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act does not preclude the Board from directing an election herein. Accordingly, we shall place the Union's name on the ballot in the election directed herein. The Union will be certified if it wins the election, provided at that time it is in compliance with Section 9 (f) and (h) of the Act. In the absence of such compliance, the Board will certify only the arithmetical results. *Matter of Burry Biscuit Corporation*, *supra*.

but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Amalgamated Lithographers of America, Local No. 18.