In the Matter of Hiden Warehouse and Forwarding Company, Employer and Samuel Carter, Petitioner and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 8, CIO, Union

Case No. 5-RD-16.—Decided December 30, 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 Petitioner asserts 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 August 14, 1947.

3. The Employer is engaged in warehousing operations, including the storing of tobacco for export and miscellaneous goods for import.

The Union contends that its contract with the Employer, executed on August 6, 1948, is a bar to the petition for decertification.

¹The Union objected to 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 Murdock.

The contract contains the following clause: "This contract shall become effective on the date hereinabove written and shall remain in effect until midnight, February 6, 1949, or until such time as the union may be decertified, whichever event shall first occur." It is on the basis of this paragraph in the contract that the Petitioner asserts that the contract is not a bar to the petition. The Petitioner further asserts that there was an abandonment by the Union of its certification during the negotiation period preceding the making of the present contract.

In resolving the issues of "contract bar" in decertification cases, the Board applies the same rules of construction as have been and still are applied with respect to petitions for investigation and certification. It is plainly evident, from the above language quoted, that specific provision was made allowing for decertification. No definite fixed period for the duration of the contract was established; rather the duration of the contract was set in the disjunctive, with the alternative being a contingency, namely decertification proceedings. The contingency having occurred, the contract must be held to be no bar to the instant decertification proceeding.

It seems clear from the record that there was no abandonment of the certification.

We find that a question affecting commerce 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 amended Act.

4. 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 employees, excluding supervisors as defined in the Act, guards, fire protection employees, and office and clerical employees.

DIRECTION OF ELECTION 2

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, as amended,

² The fact that the Union has not complied with the filing requirement 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.

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, 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 Industrial Union of Marine and Shipbuilding Workers of America, Local No. 8, CIO.