In the Matter of ART NEON COMPANY, EMPLOYER *and* DONALD HICKEY, PETITIONER *and* SIGN AND PICTORIAL PAINTERS LOCAL UNION No. 1045, UNION

Case No. 30–RD–11.—Decided June 10, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a decertification petition duly filed, a hearing was held before Clyde F. Waers, 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.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

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, an employee of the Employer, asserts that the Union is no longer the representative of certain employees of the Employer as defined in Section 9 (a) of the Act.

3. On April 1, 1948, the Employer and the Union entered into a 1-year contract covering the five employees in the unit herein involved.[1] On May 25, 1948, a union-authorization election [2] was held, pursuant to Section 9 (e) (1) of the Act, among the employees in the contract unit. Three of the five employees in the unit voted to authorize the Union to negotiate a union-security agreement.[3] On March 15, 1949, the petition herein, seeking the decertification of the Union, was filed. After expiration on March 31, 1949, of the contract between the Employer and the Union, no new contract was negotiated.

[1] The contract by its terms covers only members of the Union, but it appears to have been interpreted by the parties as covering the unit in question, which includes three sign painters and two artists and as conferring exclusive recognition on the Union for that unit.

[2] 30–UA–323

[3] The laws of the State of Colorado require that union-security provisions have the approval of 75 percent of those eligible to vote The contract which was executed on April 1, 1948, contained a union-security clause, but it was never enforced.

The Union opposes the holding of an election at this time, and refuses to participate should one be ordered, on the ground that the Employer has substituted nonunion men for those employees who voted for the Union in the union-authorization election. It appears, however, that four of the five employees now in the unit were employed at the time of the election in May 1948, although only one of them is a member of the Union in good standing. That one member refused to work because of the Employer's failure to sign a new contract, and, at the time of the hearing, had not been permanently replaced.

Although the Union indicated at the hearing that it now claims to represent only one of the five employees in the unit, its position was not clear, and, in our opinion, did not constitute an unqualified disclaimer of its position as the collective bargaining representative of the employees in the unit. Accordingly, 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 Act.

4. We find that 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 practical workmen, including journeymen sign painters, advertising, commercial, and neon, pictorial men, display men, and show card writers, also senior and junior sketch artists, but excluding all employees not actually engaged in the painting or lettering of signs, in paint processing, in silk screen processing, in the production of pictorial, lobby, or window displays or in the production of sketches; also excluding guards, professional employees, and supervisors as defined in the amended Act.

DIRECTION OF ELECTION

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 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, among the employees in the unit described 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 Sign and Pictorial Painters Local Union No. 1045.