In the Matter of GRUNWALD PLATING COMPANY, INC., EMPLOYER *and* ELLSWORTH DABNER, AN INDIVIDUAL *and* AMALGAMATED LOCAL 453, UNITED AUTO WORKERS OF AMERICA, CIO, UNION

Case No. 13–RD–50.—Decided April 6, 1950

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, a hearing was held before Morris Slavney, hearing officer. 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 [Members Houston, Reynolds, and Murdock].

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

1. The Employer is engaged in the general business of metal plating in Chicago, Illinois. Its work is done mainly for manufacturing companies located in the State of Illinois but which are directly engaged in interstate commerce. Among the Employer's customers [1] are: Dieterich Products Corporation, Chicago Machinery Laboratory, Harrington & King Perforating Company, Stiger Precision Products, Inc. Estimates from the above companies indicate that in 1949 from 42 percent to 90 percent of the work performed by the Employer for these companies was performed on products shipped outside the State of Illinois. During the past fiscal year the services performed by the Employer were valued at $375,000.

We find that the Employer is engaged in commerce within the meaning of the Act.[2]

2. The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative, as defined in Section 9 (a) of the amended Act, of the employees designated in the petition.

[1] The Board has taken jurisdiction of at least two customers of the Employer, namely Blackstone Manufacturing Company and Duro Metal Products.

[2] See *All Metal Pickling Corporation,* 85 NLRB 857. Cf. *The Efficient Tool & Die Co.,* 79 NLRB 170.

3. On May 13, 1948, a collective bargaining contract between the Employer and the Union was executed, operative until May 13, 1949, subject to automatic renewal from year to year unless 60 days' written notice of change or termination was given. The Union moves to dismiss the petition herein, contending that the contract is a bar to this proceeding. The Employer contends that the contract expired on May 13, 1949, after proper 60-day notice to change the contract had been given.

The Employer's witnesses testified that a letter, dated March 9, 1949, was sent by ordinary mail to the Union in which the Employer stated that pursuant to the 60-day notice provision of the contract, changes in the existing contract were desired. An official of the Union could not recall seeing this letter. On April 26, 1949, the Employer sent a letter to the Federal Mediation and Conciliation Service advising that, pursuant to law, the Employer was giving the Service 30 days' notice concerning termination of the contract between the Employer and the Union.

A number of meetings were held between representatives of the Employer and the Union prior to and after May 13, 1949. The contract of May 13, 1948, contained a clause permitting either party at any time to open the contract as to wage changes only, but other matters were discussed at these meetings besides the issue of wages. At the May 11, 1949, meeting, the Union submitted certain proposals as follows:

1. Wage negotiations to be held at a later date.
2. Piecework system to be eliminated. Company and Union to negotiate setup on standards and guarantee rates.
3. Present contract provisions to remain unchanged.
4. Certain Union suggestions to be stated during negotiations to be tried out by the Company.

Apparently the last meeting was held on June 11, 1949, though a meeting may have been held in July 1949.

Prior to May 13, 1949, pursuant to the contract, grievances had been submitted in writing. The Employer testified that it received no grievances either orally or in writing after May 13, 1949. The Intervenor contended that grievances were presented after that date, though no evidence was introduced to support the contention. Prior to May 13, 1949, the Employer had been checking off dues and making deductions for credit union participation for some of the employees in the Union. Since a short time after May 13, 1949, the Employer has neither checked off any dues nor received any authorizations for same nor has the Employer made deductions for credit union participation.

The Employer stated at the hearing that it continued to recognize the Union until it received notice of the filing of the instant petition.

The testimony in the record, particularly as to the negotiations between the Employer and the Union in 1949, indicates that the parties opened the contract of May 13, 1948, and sought to negotiate a new agreement.[3] The fact that the checkoff and credit union provisions of the contract of May 13, 1948, were not continued in effect also supports the view that the contract was not automatically renewed. Furthermore, neither the pending negotiations nor any understanding between the parties—here asserted by the Union but denied by the Employer—to continue the contract in effect until a new agreement was reached, could operate as a bar to a rival union's recognition claim or petition filed after the contract's expiration date.[4] Though this proceeding involves a decertification petition, the same[5] rules apply as do in certification proceedings. The motion to dismiss is denied.

Upon the facts above and from the complete record, we find that no contract is in force which might serve as a bar to the instant decertification proceeding.

Accordingly, 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. The following employees constitute an appropriate unit for purposes of collective bargaining, within the meaning of Section 9 (b) of the Act: All production and maintenance employees at the Employer's Chicago, Illinois, plant, excluding office and clerical employees, professional employees, guards, and all supervisors as defined in the 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, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date

[3] See *Indianapolis Power & Light Co.*, 76 NLRB 136; *Murlin Manufacturing Company*, 80 NLRB 309.

[4] *Pevely Dairy Company*, 80 NLRB 1683. Cf. *Stewartstown Furniture Co.*, 75 NLRB 344, where it was held that an agreement to continue the contract in force after timely notice to modify had been given rendered the contract, at best, one of indefinite duration.

[5] *Hiden Warehouse and Forwarding Company*, 80 NLRB 1587; *All-American Metal Products Company, Inc.*, 82 NLRB 563; *A. & M. Woodcraft, Inc.*, 85 NLRB 322.

of this Direction of Election, including employees who did not work during said payroll 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 Amalgamated Local 453, United Auto Workers of America, CIO.