

In the Matter of WRAY BROS.,¹ EMPLOYER and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 727, PETITIONER

Case No. 21-RC-1139.—Decided April 19, 1950

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Jack R. Berger, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.² The hearing officer referred to the Board the Employer's request that he be disqualified because of bias and prejudice. The motion is denied for the reasons stated in *Angelus Chevrolet Co.*, 88 NLRB 929,

¹ The Employer's name appears as corrected.

² (a) Before the hearing the Employer filed a motion to quash the notice of hearing because it had not been served on the two individual partners who operate as Wray Bros. The hearing officer denied the motion because the Board's Rules and Regulations relating to service had been complied with. Section 203.83 of National Labor Relations Board Rules and Regulations Series 5, as amended, provides that process of the Board "may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same." The Employer does not deny that the notice of hearing was sent by registered mail to its principal place of business, nor that it has been fully apprised of this proceeding. *N. L. R. B. v. O'Keefe and Merritt Manufacturing Company*, 178 F. 2d 445 (C. A. 9), which the Employer relies on for its contention that partners must be individually served, stands, in our opinion, only for the proposition that partners, if they are individually served, need not be personally served. See *Benson Produce Company*, 71 NLRB 888 at 891. Rule 17 (b) of the Rules of Civil Procedure for the District Courts of the United States provides that a partnership may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

(b) At the written request of the Petitioner, the Regional Director served subpoenas on the Employer, on Dan Wray, on the Ford Motor Company, Long Beach, California, and on W. B. Williams, its sales office manager. Before the hearing was scheduled to open each of these parties filed a petition with the Regional Director to revoke the subpoenas. The Employer's attorney, who also acted as attorney for the other parties, upon ascertaining at the opening of the hearing that the Regional Director had not ruled on the petitions, requested that the question of the hearing officer's authority to rule thereon be submitted to the Board, and that the hearing be continued until the Board had had an opportunity to decide the issue. The hearing officer denied the request for continuance and the petitions to revoke the subpoenas. We affirm his rulings for the reasons stated in *Bill Heath, Inc.*, 89 NLRB 67.

89 NLRB No. 76.

and in *Masters Pontiac Company, Inc.*, 88 NLRB 932, in both of which cases the same attorney who represents the Employer herein, made similar motions with respect to the same hearing officer. The hearing officer also referred to the Board the Employer's motion to dismiss the petition because of an alleged failure to establish that the Employer was engaged in interstate commerce. The motion is hereby denied for the reasons given in paragraph 1, below.

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 Reynolds and Styles].

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

1. The Employer and the other parties served refused to respond to the subpoenas requiring them to produce books and records with respect to the Employer's business, and further failed to testify at the hearing with respect thereto. From evidence introduced by the Petitioner, however, we are satisfied that the Employer has in the past year sold a substantial number of new Ford cars, trucks, and parts from its establishment in Van Nuys, California. Although the record contains no evidence as to the existence of a sales or franchise agreement between the Employer and the Ford Motor Company, we take cognizance of the normal marketing practice in the automobile industry of distributing new cars and trucks only through dealers who are assigned to defined sales territory. As the Employer does not deny that it has sold new Ford cars, we shall presume, in the absence of any contrary evidence, that such sales were made in accordance with some type of distributor arrangement, either written or oral, with the Ford Motor Company. We find, therefore, that the Employer is engaged in commerce within the meaning of the Act.³

2. The labor organization involved claims to represent certain employees of the Employer.

3. 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 Petitioner requests a unit of all employees of the Employer at its establishment in Van Nuys, California, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors. The Employer contends that the only appropriate unit would be similar to other units which the Board has found appropriate for other automobile repair shops, and from which parts men,

³ *Bill Heath, Inc., supra; Angelus Chevrolet Co.*, 88 NLRB 929; *M. L. Townsend*, 81 NLRB 739.

lubrication men, gas pump attendants, and servicemen were excluded. All the employees in Petitioner's requested unit are supervised by the service manager or his assistant, and constitute the Employer's entire force of service employees. We perceive no valid reason, in this case, for limiting the appropriate unit to a segment of the Employer's force, when all are engaged in the common task of servicing automobiles.⁴

We find that all employees of the Employer at its establishment at Van Nuys, California, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of 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 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 International Association of Machinists, District Lodge No. 727.

⁴ *Jack Taylor and Paul Bullard, d/b/a Butte Motors*, 85 NLRB 1336; *B. B. Burns Co., Inc.*, 85 NLRB 1025.