

In the Matter of ALLAN W. FLEMING, INC., EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #727,
PETITIONER

Case No. 21-RC-1191

SUPPLEMENTAL DECISION AND ORDER AMENDING
DIRECTION OF ELECTION

October 3, 1950

On July 5, 1950, the Board issued its Decision and Direction of Election herein.¹ The Direction, as amended on August 3 and September 5, 1950, provided for an election to be held not later than 90 days from the date of the Direction in a unit comprising all employees of the Employer (Allan W. Fleming, Inc., herein called Fleming) at its establishment (a De Soto-Plymouth automobile sales and service agency) in North Hollywood, California, excluding salesmen, office and clerical employees, watchmen, professional employees, guards, and supervisors as defined in the Act.

On August 23, 1950, the Regional Director for the Twenty-First Region filed a motion for order to show cause why Charles Arthur Gore, d/b/a C. "Bud" Gore, herein called Gore, should not be substituted for Fleming as the Employer in this proceeding. In support of the motion, the Regional Director alleged that: On June 15, 1950, after the hearing herein, but before the date of the Board's Decision and Direction of Election, Fleming sold all its assets to Gore, who is now the franchise holder from the Chrysler Company in place of Fleming;² the business formerly conducted by Fleming is now being conducted by Gore at the same location; three of the five employees in the unit found appropriate by the Board have continued to work for Gore without any interruption in their employment, the other two having

¹ 90 NLRB No. 118.

² In its original Decision, the Board noted that the record contained no evidence as to the existence of a sale or franchise agreement between Fleming and the Chrysler Corporation. However, it stated that it would take cognizance of the normal marketing practice in the automobile industry of distributing new cars only through dealers who are assigned to defined sales territories, and would presume, in the absence of any evidence to the contrary, that Fleming's sales were made in accordance with some type of distributor arrangement, either written or oral, with the Chrysler Corporation.

91 NLRB No. 108.

been laid off; the only supervisor employed by Fleming over the men in the unit has remained in the same capacity with Gore; and the change in legal ownership which occurred has not materially changed the nature of the unit or of the employees involved.

On August 29, 1950, Gore filed an objection to motion for order to show cause, in which he requested the Board to deny the Regional Director's motion, on the ground that Gore is not a successor to Fleming and did not take over all its employees. He alleged, in support of his position, that:

(1) Gore purchased from Fleming only the visible assets of Fleming, and did not purchase from it the franchise of the Chrysler Corporation;

(2) Gore has obtained his own franchise from the Chrysler Corporation;

(3) Gore did not take over all the employees of Fleming, and since purchasing the assets and establishing the De Soto-Plymouth business in his name, has employed three new employees who fall within the unit described in the Board's Decision of July 5, 1950; and

(4) Fleming is a corporation which has not been dissolved, and the stock of the corporation is still owned by Fleming, and therefore the Board's Direction of July 5 still remains good as against Fleming. Gore therefore contended that, in order for the Board to direct an election among the employees at his establishment, it is necessary for the Petitioner to file a new petition.

On August 31, 1950, the Regional Director requested the Board to treat his motion for order to show cause as a motion to amend direction of election. As Gore, in his reply to the original motion, in effect advanced his reasons in opposition to the proposed amendment, we³ deem it unnecessary to issue an order to show cause. We have therefore considered the Regional Director's motion as a motion to amend the Direction of Election by substituting Gore for Fleming as the Employer, and Gore's reply as a reply to the motion to amend. For the reasons given below, the motion to amend is hereby granted.

We note that, in opposing the motion, Gore relies particularly on the fact that he has not taken over Fleming's franchise or all of its employees, and that he has hired some new employees. However, he does not deny or otherwise controvert the allegations of the Regional Director that he has purchased Fleming's assets (with the exception of the franchise), and is continuing the same business, at the same

³ Pursuant to 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].

location, with the same supervisor, and with some of the same employees. Furthermore, he does not contend that the nature of the unit has been changed as a result of the change in ownership or the hiring of new employees.

We have previously held that where, after a direction of election has been issued, the business involved is sold, but there is no change in any essential attribute of the employment relationship, the direction is to be construed as providing for an election among the employees of the successor.⁴ Under the circumstances of this case, we are convinced that, except for the substitution of Gore for Fleming, the relationship between the employees in the unit and their Employer has remained essentially unchanged. We therefore find, contrary to Gore's contention, that he is a successor to Fleming, and that, as such successor, a question affecting commerce exists concerning the representation of Gore's employees. We shall amend the Direction to reflect this successorship.⁵

ORDER

IT IS HEREBY ORDERED that the Direction of Election herein, as amended, be, and it hereby is, further amended by inserting before the words "the Employer," the words "Charles Arthur Gore, d/b/a C. 'Bud' Gore, successor to," and by striking the words "but not later than 90 days from the date of this Direction" and substituting therefor the words "but not later than 120 days from the date of this Direction."

⁴ *Pacific Tankers, Inc.*, 84 NLRB 965; *Alaska Salmon Industry, Inc., et al.*, 61 NLRB 1508.

⁵ Although Gore alleges that Fleming is still in existence as a corporate entity, we regard this circumstance as immaterial in the absence of any allegation or showing that he is still an employer of the employees involved.