

In the Matter of KAY & BURBANK COMPANY, EMPLOYER *and* TEAMSTERS
AUTOMOTIVE WORKERS, LOCAL UNION No. 495, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, AFL,¹ PETITIONER

Case No. 21-UA-3179.—Decided November 24, 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

Upon the entire record in this case, the Board³ finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Petitioner is the exclusive bargaining representative of the employees in the appropriate unit.

The Petitioner alleges, and we find, that more than 30 percent of the employees in the unit represented by the Petitioner desire to authorize the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit.

The Alleged Contract Bar and the Alleged Question Concerning
Representation

Since about 1941 the Association has been the recognized bargaining representative for the employees of the Employer. The most recent agreement, executed by the Employer and the Association in May

¹ Hereinafter referred to as Local 495.

² At the hearing Kay & Burbank Employees Association, hereinafter referred to as the Association, was permitted to intervene on the basis of an alleged contractual interest in this proceeding.

The Employer's motion to dismiss the petition on the ground that a contract between it and the Association is a bar to this proceeding is denied for reasons hereinafter stated.

³ 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 Murdock.]

1950, was subsequently ratified by the membership of the Association and became effective on June 1, 1950, for a period of 1 year. During the course of negotiations with respect to that agreement, the Association, at the request of the Employer, filed on May 24, 1950, a petition for certification, in Case No. 21-RC-1334.⁴ At the following consent election conducted on July 28, 1950, Local 495, the Intervenor in that case, won the election, and was certified on August 7, 1950, as the exclusive bargaining representative of all employees of the Employer at its two Los Angeles locations, excluding salesmen, confidential employees, guards and watchmen, and supervisors as defined in the Act. Since the election, the Employer, because of the contract with the Association, has refused to recognize Local 495 as the bargaining representative of its employees,⁵ contending that that contract is a bar to this election.⁶

We find no merit in this contention. The Board has held that the existence of a bargaining agreement does not determine whether or not a union-shop authorization election should be conducted.⁷ In such a proceeding the only prerequisites are: (1) That the labor organization shall have presented evidence that at least 30 percent of the employees within the unit desire such labor organization to negotiate and execute a union-shop contract, and (2) that no question of representation shall exist.⁸ Although a refusal by an employer to recognize a petitioner will ordinarily raise a question concerning representation, such a question may not, under normal circumstances, be raised within the certification year.⁹ Accordingly, we find that the contract between the Employer and the Association is not a bar to this proceeding; and that because a year has not elapsed since the certification of Local 495 as the bargaining representative of the employees in the appropriate unit, no question affecting commerce exists concerning the representation of the employees involved in the present proceeding.

In view of the foregoing, we find that the requirements for a union-shop authorization election, set forth in Section 9 (e) of the Act, have been met.

⁴ The record does not show clearly whether the contract was executed before or after the filing of the petition in Case No. 21-RC-1334. In any event neither of the contracting parties urged the contract as a bar to that proceeding.

⁵ Although the Employer does not currently recognize the Teamsters as the bargaining representative, no unfair labor practice charges have been filed by the Teamsters.

⁶ In view of our finding herein, we find it unnecessary to pass upon Local 495's alternative contention that the Association is a defunct labor organization.

⁷ *Utah Wholesale Grocery Co.*, 79 NLRB 1435.

⁸ See Section 9.(e) of the Act.

⁹ *Lift Trucks, Inc.*, 75 NLRB 998.

4. The following employees of the Employer constitute a unit appropriate for the purposes of Section 9 (e) (1) of the Act:

All employees of the Employer employed at its two Los Angeles, California, locations (1714 S. Hope Street, and 7300 Morrows Avenue) excluding salesmen, confidential employees, guards and watchmen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]