

In the Matter of ALPERT & ALPERT, EMPLOYER and WAREHOUSE, PROCESSING & DISTRIBUTION WORKERS UNION, LOCAL 26, INTERNATIONAL LONGSHOREMEN & WAREHOUSEMEN'S UNION, PETITIONER

*Case No. 21-RC-1222.—Decided December 18, 1950*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Ralph H. Nutter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

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

3. The Intervenor, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 578, in its brief moves for the dismissal of the petition on substantially the following grounds: (a) That a contract between the Intervenor and the Employer, executed before the Petitioner achieved compliance with the filing requirements of the Act, is a bar to the proceeding; and (b) that the Petitioner's eventual compliance was defective. For the following reasons, the motion to dismiss is hereby denied.

On March 13, 1950, the Petitioner instituted steps to achieve initial compliance with the filing requirements of Section 9 (f) and (h) of the Act. By March 17, 1950, the Petitioner had completed compliance with Section 9 (f). However, it was not until March 30, 1950, the date on which the Petitioner complied with Section 9 (h), that the Board issued its certificate of compliance to the Petitioner.

In the meantime, on March 20, 1950, the Petitioner notified the Employer of its claim to represent the Employer's production and maintenance employees, and on the same day filed the petition herein. Also, on or before that date, the Intervenor and the Employer concluded negotiations for a collective bargaining contract. However, the contract was not executed until the following day, March 21, 1950. It is this contract which the Intervenor asserts as a bar.

The Board has repeatedly held that an oral contract has no standing as a bar to a representation proceeding.<sup>1</sup> Thus not until March 21, 1950, the date on which the contract between the Intervenor and the Employer was reduced to writing and *signed*, could it constitute a bar.<sup>2</sup> However, on the preceding day, March 20, the Petitioner had made a valid representation claim upon the Employer; within 10 days thereafter, on March 30, any possible defect in the petition filed herein was cured by the issuance to the Petitioner of the afore-mentioned certificate of compliance. Accordingly, without regard to the standing of the March 20 petition during the period of the Petitioner's noncompliance, it is clear under the well-established rule of the *General Electric X-Ray* case<sup>3</sup> that the Petitioner's prior claim upon the Employer and the existence within 10 days thereafter of a valid petition, removed the March 21 contract between the Intervenor and the Employer as a bar to this proceeding.<sup>4</sup>

As its second ground for dismissal of the petition, the Intervenor challenges the truth of the Section 9 (h) affidavit filed by Harry Bridges, president of the International Longshoremen & Warehousemen's Union with which the Petitioner is affiliated. It asserts that the Board should not process the petition until it investigates the truthfulness of Bridges' affidavit. We have heretofore refused to go behind the affidavits filed under the provisions of Section 9 (h), stating that neither the statute itself nor its legislative history authorize the Board "to investigate the authenticity or truth of the affidavits which have been filed."<sup>5</sup> We do not believe, as urged by the Intervenor, that the conviction of Bridges of perjury and of conspiracy to defraud the United States in connection with the falsification of his application for citizenship papers,<sup>6</sup> calls for a different ruling. In this situation, as in others already considered by the Board, "persons desiring to establish falsification or fraud have recourse to the Department of Justice for a prosecution under Section 35 (a) of the Criminal Code."<sup>7</sup>

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.

<sup>1</sup> *Elicor, Incorporated*, 46 NLRB 1035.

<sup>2</sup> *Newman-Crosley Steel Corporation*, 73 NLRB 513.

<sup>3</sup> 67 NLRB 997.

<sup>4</sup> Members Reynolds and Murdock believe that the holding of the Board on the issue of noncompliance in *New Jersey Carpet Mills, Inc.*, 92 NLRB 604, is controlling. Although dissenting in that case, they deem themselves bound by the majority decision therein, and therefore join in the above application of the *General Electric X-Ray* rule.

<sup>5</sup> *Craddock-Terry Shoe Corporation*, 76 NLRB 842; and *American Seating Company*, 85 NLRB 269.

<sup>6</sup> *U. S. v. Bridges*, 90 F. Supp. 973 (N. D. Cal. 1950).

<sup>7</sup> See cases cited in footnote 5, *supra*.

4. The following employees, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees, including truck drivers, employed by the Employer at its place of business in Los Angeles, California, but excluding office, clerical and professional employees, guards, and supervisors as defined in the Act.

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