

MEMBERS MURDOCK and STYLES took no part in the consideration of the above Decision and Direction of Election.

GENERAL PAINT CORPORATION, PETITIONER *and* STEEL, PAPER HOUSE AND CHEMICAL WORKERS UNION, LOCAL 578, A. F. OF L.

GENERAL PAINT CORPORATION, PETITIONER *and* PAINT MAKERS UNION, LOCAL 1232, A. F. OF L. *Cases Nos. 21-RM-183 and 21-RM-184. July 25, 1951*

Decision and Order

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Jerome A. Reiner, 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. No 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, for the following reasons:

On March 2, 1951, the Steel, Paper House and Chemical Workers Union, Local 578, A. F. of L., hereinafter called Local 578, and Paint Makers Union, Local 1232, A. F. of L., hereinafter called Local 1232, requested the Employer to give them a letter providing for recognition of the Unions as representatives of the Employer's employees and agreeing to negotiate a contract.¹ Local 578 sought to represent employees engaged in truck driving, shipping, receiving, and warehousing; Local 1232 sought to represent production and maintenance employees, excluding truck drivers, shipping, receiving, and warehousing employees.

Representatives of Local 578 and Local 1232, acting jointly, advised the Employer on March 2 that they did not represent a majority of the Employer's employees and that they did not propose to make further attempts to solicit members from among the Employer's employees. Efforts to secure recognition through the medium of a letter were continued at that time, however, and thereafter on about March

¹ Local 1232 had filed a petition (21-RC-1775) on January 26, 1951, alleging that it represented a majority of the Employer's employees in a production and maintenance unit. After the Employer had agreed to a consent election, Local 1232 withdrew its petition February 14, 1951

12 and 13, 1951. Again no claim to represent a majority of the employees was made by either Union, but the Employer was advised on March 13, 1951, that if it did not acquiesce to the demands of the Unions for recognition that it would be placed on a "we do not patronize" list.

On March 15, 1951, the Employer filed the instant petitions. On March 19, 1951, picketing began at the Employer's establishment. The picket signs were addressed to the public and stated that: "The products manufactured by this firm are non-union. This product is on the 'we do not patronize list' of Teamsters' Joint Council 42, Los Angeles Building Trades Council, Los Angeles Central Labor Council, Teamsters' Local 578, Paint Makers Local 1232." Leaflets setting forth the names of manufacturing firms who had signed contracts with Local 1232 and containing a partial list of the unorganized paint manufacturing companies in Los Angeles, including the name of the Employer, were distributed to employers and employees where the Employer's products were used. Representatives of Local 578 advised various trucking concerns who handled the Employer's products of the existence of the picket line.

On March 22, 1951, the Employer received a joint letter, dated March 16, 1951, from the Unions disclaiming any interest as bargaining agents and any interest in a contract on behalf of the Employer's employees. On April 2, 1951, the Employer was advised by Local 578 and Local 1232 that no agreement for a consent election could be reached and that both Unions proposed to continue picketing until they could come to the Employer and ask for recognition based upon a showing of cards.

At the hearing both Local 578 and Local 1232 through their attorney expressly disclaimed any right "as representation agents, as bargaining agent for employees" of the Employer; and representatives of both Unions in testifying disavowed any right as bargaining representative of the Employer's employees. The joint brief of the Unions contains a formal disclaimer of representative status.

Local 578 and Local 1232 contend that the petitions herein should be dismissed because they no longer claim to represent any of the Employer's employees. The Employer contends that the Union's disclaimer is insincere and equivocal in view of the continued picketing, the use of an unfair employer list, and the activities of union representatives in advertising the existence of the dispute. The Unions assert that the picketing is for organizational purposes. Although the activities pointed out by the Employer are forms of economic coercion which indicate a desire by the Unions ultimately to bargain for the Employer's employees, the Board does not regard

such activities as necessarily inconsistent with a current disclaimer of representation.² The activities here engaged in do not, in our opinion, contravene the Unions' disclaimer of interest. They do not constitute a present claim to represent the employees involved or a request for bargaining such as would give rise to an obligation on the part of the Employer to recognize the Unions as the representatives of its employees. We find, therefore, that no question concerning representation exists at this time, and we shall dismiss the petitions.

Order

It is hereby ordered that the petitions in Cases Nos. 21-RM-183 and 21-RM-184 be, and they hereby are, dismissed.

CHAIRMAN HERZOG, dissenting:

I would direct an election on this Employer's petition. The facts in the present record satisfy me that, unlike many other cases in which I have joined the majority,³ the Unions' disclaimers here did not eliminate the question concerning representation. Their acts, from beginning to end, belie their words. Their initial demand for recognition without regard to majority status, and their attempt as late as April to secure the same results by bringing pressure upon the Employer's customers, convince me that the "claim to be recognized as the representative defined in Section 9 (a)"⁴ persisted to the time that the record was taken and closed.

MEMBER REYNOLDS, dissenting:

Ever since the Board issued its decision in the *Ny-Lint Tool* case, 77 NLRB 642, I have considered myself bound by the opinion of the majority in that case. Although, insofar as my views are concerned, I see no distinguishing factors in this case, other than that it can be said to be more illustrative of the inherent unsoundness of the majority position, I take this opportunity to join the Chairman in dissenting from the dismissal of the petition herein. However, in so doing, I desire to reiterate, for the reasons set forth in my dissenting opinion in the *Ny-Lint* case, my more basic position that once a union has presented an employer with a claim to majority representation, it should not be allowed by a subsequent disclaimer to defeat the right of that employer to petition the Board for a determination of the question concerning representation raised by the union's original claim.

² See *Hamilton's Ltd.*, 93 NLRB 1076; *Smith's Hardware Company*, 93 NLRB 1009; *Hubach and Parkinson Motors*, 88 NLRB 1202.

³ Beginning with the *Ny-Lint Tool* decision, 77 NLRB 642.

⁴ Section 9 (c) (1) (B) of the Act.