

In the Matter of BERRY BISCUIT CORPORATION, EMPLOYER and RESLEY E. HIBSHMAN, PETITIONER and UNITED BAKERY, CONFECTIONERY AND CULINARY SERVICE EMPLOYEES UNION, LOCAL 262, AFFILIATED WITH UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, CIO, UNION

*Case No. 4-RD-6.—Decided March 10, 1948*

*Mr. T. E. Griest*, of Elizabeth, N. J., for the Employer.

*Mr. Allen H. Krause*, of Lebanon, Pa., for the Petitioner.

*Rothbard, Harris and Oxfeld*, by *Mr. Sidney Birnbaum*, of Newark, N. J., for the Union.

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held at Lebanon, Pennsylvania, on December 16, 1947, before John H. Garver, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Berry Biscuit Corporation is a Delaware corporation engaged in the manufacture of prepared flour mixes at Meyerstown, Pennsylvania. The Employer annually uses raw materials valued at \$500,000, of which 70 percent, or approximately \$350,000, represents shipments to its Meyerstown plants from points outside the Commonwealth of

\*Chairman Herzog and Members Murdock and Gray.

Pennsylvania. The Employer annually manufactures finished products valued at approximately \$850,000, of which 90 percent is shipped to points outside the Commonwealth.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE PARTIES INVOLVED

The Petitioner<sup>1</sup> asserts that the Union is no longer the representative of the Employer's employees as defined in Section 9 (a) of the Act.

The Union, a labor organization affiliated with the Congress of Industrial Organizations, is the recognized representative of employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

On December 23, 1946, the Employer executed with the Union an exclusive collective bargaining contract terminating on December 31, 1947. The contract contained a provision for automatic annual renewal unless either party gave to the other written notice to the contrary at least 30 days before the yearly expiration date. No such notice was given in 1947. On November 7, 1947, the Petitioner filed the instant petition requesting decertification of the Union.

The Union contends that its contract is a bar to the proceeding herein. We find no merit in this contention. As the instant petition was filed on November 7, 1947, before the operative date of the automatic renewal clause, we find, in accordance with well-established principles of the Board, that the contract is not a bar to the proceeding.<sup>2</sup>

The Union further asserts that, because this is a decertification proceeding, it should be permitted to introduce evidence attacking the authenticity of the showing of interest made by the Petitioner in support of the petition herein. We have heretofore held, in certification cases, that the requirement of a showing of representative interest is only an administrative device adopted to enable the Board to determine whether further proceedings are warranted, and is not subject to objection at the hearing.<sup>3</sup> Decertification petitions under Section 9 (c) (1) of the Act, like petitions for certification, raise questions of representation for determination by the Board. We will accordingly

<sup>1</sup> The record does not disclose the relationship between the Petitioner and the Employer.

<sup>2</sup> *Matter of Snow & Nealley Co.*, 76 N. L. R. B., 390; *Matter of Drewrys Limited U. S. A. Inc.*, 74 N. L. R. B. 31, and cases cited therein.

<sup>3</sup> *Matter of O. D. Jennings & Company*, 68 N. L. R. B. 516; *Matter of Mascot Stove Company*, 75 N. L. R. B. 427; *Matter of The Ohio Fuel Gas Company*, 75 N. L. R. B. 975.

apply the same rule to the present decertification proceeding,<sup>4</sup> and will affirm the hearing officer's ruling herein refusing to admit evidence relating to such showing.<sup>5</sup>

We find that 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.

#### IV. THE APPROPRIATE UNIT

We find, substantially in accord with the agreement of the parties, that all employees in the Employer's Meyerstown plants, excluding foremen, foreladies, superintendents, line supervisors, office, laboratory, and clerical workers, and all 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.<sup>6</sup>

#### DIRECTION OF ELECTION <sup>7</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Burry Biscuit Corporation, Meyerstown, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees

<sup>4</sup> See Report of Senate Labor Committee, No 105, 80th Cong., 1st Sess., pp 10, 25.

<sup>5</sup> The Union also contended that it should be allowed to adduce testimony with respect to whether signatures in support of the petition were obtained by "fraud or duress or intimidation or threats or other devious methods." Insofar as the Union may have sought thus to present evidence of unfair labor practices, we also find such evidence inadmissible under our established practice of excluding evidence of unfair labor practices in representation proceedings. See *Matter of Federal Shipbuilding and Drydock Company*, 76 N L R B 413.

<sup>6</sup> This is essentially in accord with the unit provided for in the collective bargaining contract between the Employer and Union.

<sup>7</sup> The fact that the Union has failed to comply with the registration and filing requirements of Section 9 (f), (g), and (h) of the amended Act does not preclude the Board from directing an election on this decertification petition. Accordingly, we shall also place the Union's name on the ballot in the election directed hereinafter. Under our policy, the Union will be certified if it wins the election, *provided* that at that time it is in compliance with Section 9 (f) and (h) of the Act. Absent such compliance, the Board will only certify the arithmetical results of the election. See *Matter of Harris Foundry & Machine Company*, 76 N L R B, 118.

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 by United Bakery, Confectionery and Culinary Service Employees Union, Local 262, affiliated with United Retail, Wholesale and Department Store Union, CIO, for the purposes of collective bargaining.