

In the Matter of BERNARD KLINT, GRACE KLINT, DAVID H. NYBERG and EMMA NYBERG, co-partners, d/b/a NY-LINT TOOL & MANUFACTURING Co., EMPLOYER AND PETITIONER and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE #1553, DISTRICT #101

*Case No. 13-RM-3.—Decided May 13, 1948*

*Mr. Francis E. Hickey*, of Rockford, Ill., for the Employer.

*Mr. J. J. Denny*, of Chicago, Ill., for the Union.

DECISION  
AND  
ORDER

Upon a petition duly filed, hearing in this case was held at Rockford, Illinois, on December 9, 1947, before Gustaf B. Erickson, 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 the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Ny-Lint Tool & Manufacturing Co. is a partnership engaged in the manufacture of metal toys and stampings at its plant at 1823 16 Avenue, Rockford, Illinois. Purchases of raw material for 1947 were valued in excess of \$50,000, of which 10 percent represented shipments from outside the State of Illinois. Sales during the same year were valued in excess of \$100,000, of which approximately 90 percent represented shipments to points outside the State.

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

II. THE ORGANIZATION INVOLVED

International Association of Machinists, Lodge #1553, District #101, herein called the Union, is an unaffiliated labor organization, claiming to represent employees of the Employer.

## III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

The Union has represented the production and maintenance employees of the Employer for several years, although it has never been certified by the Board. In August 1947 the Union, having given timely notice that it would not renew the contract about to expire in September 1947, submitted to the Employer a proposed contract covering the same unit of production and maintenance employees. The Employer expressed doubt that the Union represented a majority of its production and maintenance employees, refused to negotiate a new contract, and filed this petition.

At the hearing, the Union disavowed any claim to represent a majority of the Employer's production and maintenance workers. However, it did claim to represent a majority of the Employer's tool-room employees, who, it contended, constitute an appropriate craft unit, and requested an election among them.

The question of representation, although brought to the Board's attention by the Employer's petition, was raised by the affirmative claim of the Union to represent a majority of the Employer's employees in the production and maintenance unit. The Union has now withdrawn its claim to represent the employees in the production and maintenance unit, which is the unit designated in the Employer's petition as well as the unit designated in the Union's own proposed contract. The Union has thereby abandoned its right to represent these employees, and has waived any obligation the Employer may have had to recognize it as the bargaining representative of such employees. In the absence of a claim by the Union to represent the employees in the aforesaid unit, a question concerning representation does not exist, and the Board is, under these circumstances, without jurisdiction to proceed with its investigation under Section 9 (c) (1) of the Act, as amended.<sup>1</sup> Accordingly, we shall dismiss the petition.

Our dissenting colleague maintains that the Board is required by the Act, as amended, to proceed to an election, and that failure to do so "emasculates" the Employer's right to file a petition. To force the Union, under this theory, to an election in a unit which it does not claim to represent would result, not only in a futile act leading toward a purely negative result, but also in depriving the employees of any opportunity to select any bargaining representative for an entire year after the election.<sup>2</sup> The right of the Employer to seek an election is not a guarantee that it will secure one in every case, nor is it paramount to the right of the employees to designate a bar-

<sup>1</sup> See *Matter of Herman Loewenstein, Inc.*, 75 N. L. R. B. 377.

<sup>2</sup> Section 9 (e) (3) of the Act, as amended.

gaining representative during the ensuing 12 months. The Employer is not injured by dismissal of its petition. It *has* accomplished its objective in filing the petition—to determine whether or not the Union now represents its production and maintenance employees—and, as mentioned above, is free of any obligation it may have had to recognize the Union. If, as the dissenting opinion indicates, this leaves the door open to the Union to harass the Employer with demands for recognition, an election would not close that door.

The dissenting opinion cites the *Loewenstein* case<sup>3</sup> as authority for concluding that the Board has jurisdiction because of the Union's original claim. As the Board stated in that case, however, "Absent such a claim, the Board would be without jurisdiction to proceed with its investigation under Section 9 (c) (1) (B) of the Act as amended." Such a claim is now "absent" here.

### ORDER

Upon the basis of the above findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for certification of representatives of employees of Bernard Klint, Grace Klint, David H. Nyberg and Emma Nyberg, co-partners, d/b/a Ny-Lint Tool & Manufacturing Co., Rockford, Illinois, filed by the Employer, be, and it hereby is, dismissed.

MEMBER GRAY took no part in the consideration of the above Decision and Order.

MEMBER REYNOLDS, dissenting:

I do not agree with my colleagues that we should dismiss the petition in this case for, in my opinion, such action nullifies substantially the purposes of Section 9 (c) (1) (B),<sup>4</sup> pursuant to which the Employer filed its petition.

Although the Board, before the amendment of the Act, had permitted an employer to file a representation petition when faced by conflicting union claims, no procedure was provided for an employer

<sup>3</sup> Footnote 1, *supra*

<sup>4</sup> The pertinent provisions of Section 9 (c) .

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

\* \* \* \* \*

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in Section 9 (a) ,

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice \* \* \*

to file a petition when presented with a representation claim by only one union. Thus, although an employer disputed the majority representation status of a single claimant union, there was no recourse to the Board for peaceful settlement of this dispute. As a result, great inequities often were the inescapable lot of an employer, due to the pressure of coercive and harassing "sign or else" tactics of a claimant union.<sup>5</sup>

It was an inequity such as this which impelled the prescription in the Labor-Management Relations Act, 1947, of certain rights of employers as well as of labor organizations and the accompanying mandate therein that "employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other."<sup>6</sup> Section 9 (c) (1) prescribes and calls for the recognition of just such an employer right.<sup>7</sup> As stated in the legislative history preceding the enactment of Section 9 (c) (1) (B), an employer is given the same right to petition which unions have heretofore enjoyed.<sup>8</sup> The decision of the majority in this case, however, emasculates this "equal" right, for by the simple process of disclaiming a representation interest previously made a union is given an unlimited veto of an employer's right to petition. This control by the union not only exceeds the statutory impositions on the employer's

<sup>5</sup> Senator Taft, in Senate Debate on S 1126, the Senate version of the bill finally enacted into law :

Mr President, one of the matters which created the greatest complaint in the early days, and still does, is conduct of elections by the National Labor Relations Board. An election under present law may be sought only by a union. In the early days the Board exercised its discretion in favor of particular unions. It would not order an election until the union told it conditions were favorable, and it might win. Many of the greatest abuses on the part of unions occurred in the use of that discretionary power by the Board in the early days.

Today an employer is faced with this situation. A man comes into his office and says "I represent your employees. Sign this agreement, or we strike tomorrow." Such instances have occurred all over the United States. The employer has no way in which to determine whether this man really does represent his employees or does not. The bill gives him the right to go to the Board under those circumstances, and say, "I want an election. I want to know who is the bargaining agent for my employees." Certainly I do not think anyone can question the fairness of such a proposal. [93 Cong Rec 3838 ]

<sup>6</sup> Section 1 (b), Labor-Management Relations Act, 1947, Public Law 101, 80th Cong Chapt. 120 1st Sess

<sup>7</sup> Senator Ball, in Senate Debate on S 1126 .

A few additional rights are given to employers. I think that is done on the basis that if a free economy and a free enterprise system are to be maintained, employers as well as employees must be entitled to the same rights and to equal justice under the law. One such right is the right to petition the National Labor Relations Board for an election to determine the bargaining representative of an employer's workers, whenever one or more unions present to the employer a demand for recognition as representing the employees. [93 Cong. Rec 5014 ]

<sup>8</sup> 93 Cong Rec 4143.

right,<sup>9</sup> but it is also a prerogative wholly incompatible with the Congressional intent to check abuses by unions seeking to secure bargaining status.

Accordingly, I am of the opinion that the question concerning representation, raised by the Union's claim,<sup>10</sup> was not defeated by the Union's subsequent disclaimer of representation. The Board therefore has jurisdiction, in my view, to proceed to an election among the production and maintenance employees who, upon this record, clearly constitute an appropriate bargaining unit under established principles of the Board.<sup>11</sup>

---

<sup>9</sup> "Employers may ask for elections, *but only after a representative has claimed collective-bargaining rights*. This prevents an employer from demanding an election as soon as organizing begins and before the union has a majority. By not asking for bargaining rights until they believe they have organized the majority of the employees, unions can time the holding of an election to suit themselves." H Rep No. 245, on H R. 3020, p 35. See also S R No 105, on S 1126, p 11. H R 3020, and S. 1126 contained provisions substantially similar to that enacted into law as Sec. 9 (c) (1) (B).

<sup>10</sup> See *Matter of Herman Loewenstein, Inc*, 75 N L R B 377.

<sup>11</sup> The several years' history of collective bargaining on a production and maintenance unit basis, and the desire of both Union and Employer to continue bargaining on that basis in August 1947, at the time the question concerning representation arose, sufficiently confirm the conclusion that a production and maintenance unit is appropriate in this instance.