

The Employer concedes that it is engaged in commerce within the meaning of the Act and that therefore the Board could lawfully assert jurisdiction here. However, as the Employer's operations appear to be essentially intrastate in character and as it deals almost exclusively with local rural consumers, who are themselves members of the cooperative, we believe that its operations do not have a sufficient impact upon interstate commerce to justify our taking jurisdiction. Accordingly, without deciding the other issues raised by the parties, we shall dismiss the petition on the ground that it would not effectuate the policies of the Act to assert jurisdiction.

[The Board dismissed the petition.]

Member Murdock, dissenting:

I dissent from the majority's departure from the Board's jurisdictional plan in refusing to assert jurisdiction over a public utility. That plan, which has been in effect for 3 years, states the Board's policy to assert jurisdiction over "Public utility systems such as gas, electric, and public transit systems." In the lead case announcing that part of the plan,¹ the Board said: "Our experience has shown that public utilities, including public transit systems of the type here involved, have such an important impact on commerce as to warrant our taking jurisdiction over all cases involving such enterprises, where they are engaged in commerce or in operations affecting commerce, subject only to the rule of de minimis." (Emphasis supplied.) Clearly the rule of de minimis has no application here, the Employer concedes that it is engaged in commerce within the meaning of the Act, and whatever the character of its other operations, there is a direct inflow of materials from out of State in an amount in excess of \$150,000. The fact that a very large proportion of the customers are rural consumers has never been deemed a reason for excepting a public utility from the plan. We have taken jurisdiction over so many similar rural electric cooperatives, that there is no need to begin citing cases.

¹W. C. King, d/b/a Local Transit Lines, 91 NLRB 623.

GOVERNALE & DREW, INC., Petitioner *and* INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL *and* UNITED MINE WORKERS OF AMERICA.¹ Case No. 21-RM-257. October 28, 1953

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 Max Steinfeld

¹United Mine Workers of America was denied leave to intervene because it is not in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act.

and Leo Fischer, hearing officers. The hearing officers' 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 question concerning representation:

International Ladies' Garment Workers Union, AFL, herein called the Union, contends that an existing association-wide collective-bargaining contract with California Dress & Sportswear Association, Inc., herein called the Association, is a bar to this proceeding. The Employer-Petitioner asserts that neither it nor its predecessor in business, Pat Governale, is bound by this agreement.

Pat Governale began to operate a dress manufacturing plant as a sole proprietorship in April 1952. In order to obtain "contract business" from other dress manufacturers, she joined the Association, a trade association admitting to membership manufacturers of ladies' sportswear and allied articles of ladies' wearing apparel. The Association has bargained collectively with the Union on an association-wide basis since 1941.

When Pat Governale joined the Association, October 6, 1952, she signed not the official application form,² but one improvised by the executive secretary of the Association because he did not have an official form with him at the time. This application read:

We the undersigned join the California Sportswear & Dress Assn. Inc. with the express purpose of having this Association handle our Labor Relations and Government Relations problems.

We agree to retain ourselves in good standing in this association for the duration of our Union Contract or continuation of same.

From May 1952 to November 1952, before and after Governale joined the Association, the latter's executive secretary conducted bargaining negotiations with the Union for a new association-wide agreement. During the course of these negotiations, by bulletins, phone calls, and meetings, the secretary kept the Association's membership informed of progress being made. Governale attended a meeting held on November 24, 1952 at which the membership voted on whether the new con-

² The Association's bylaws provide that "applicants for membership shall fill out an official application form to be provided by the Association . . ." This official application form states that the new member will "abide by the rules and by-laws as formulated by its Board of Directors and Members. Our membership shall be constant during the period of our Union contract with the I.L.G.W.U. [Union] and its subsequent Contracts."

tract should be for a 3- or 4-year term.³ Apparently, Governale did not vote on the proposal. According to the Association's executive secretary, he received the assent of all Association members, except Pat Governale, to this proposed contract which was signed on November 26, 1952, and is to be effective for 4 years.⁴ It is this contract which the Union asserts is a bar.

Several times after November 26, 1952, union representatives called upon Governale to ask her to sign a contract. Pat Governale sold her business on January 11, 1953, to Governale & Drew, Inc., the Employer-Petitioner. Governale has a 40 percent interest in this corporation.

On March 9, 1953, the Union called a strike of the Employer's employees. Governale informed the Association's executive secretary of this action and asked for help. Whereupon the latter said, according to Governale's uncontradicted testimony, that he couldn't do anything "about the strike until you give [me] authority to negotiate a contract."

On March 13, 1953, Governale sent a letter of resignation to the Association. On the same day, the Union sent a telegram to "Pat Governale and/or Governale and Drew" stating that the Union represented a majority of all production employees employed by the firm of Pat Governale and demanding recognition and collective bargaining. Thereafter, on March 25, 1953, the Employer-Petitioner filed the instant petition requesting a Board-directed election.

Although the improvised application which Pat Governale signed on joining the Association stated that she joined "for the express purpose of having [this] Association handle [our] Labor Relations problems," the Association's bylaws contain no language making collective-bargaining agreements negotiated by the Association binding upon individual members. Furthermore, the conduct of the Association and the Union, from and after the execution of the new association-wide agreement, indicates that these two parties did not regard Governale as bound by the contract. Thus, the Association's secretary emphasized in his testimony that he had received prior approval of the agreement from all members except Pat Governale, indicating that individual member approval was necessary if such member was to be bound by the agreement. On March 9, 1953, when Governale informed the Association's executive secretary of the strike which had commenced and asked for help, the secretary replied that he could do nothing until he received authority to negotiate a contract with the Union. Also, union representatives called upon Governale several times after the date of signing of the association-wide

³ The Association's minutes indicate that this was the purpose of the meeting. The Association's secretary testified that the November 24 meeting was actually a ratification meeting and that approval of the contract was obtained from the members present. Approval of the members not present was obtained subsequently by telephone.

⁴ Although Governale did not "ratify" the contract, she continued to pay dues to the Association through February 1953.

agreement to ask her to sign a contract. This effort culminated in the March 13, 1953, telegram from the Union to Governale requesting recognition and collective bargaining.

Under all these circumstances, we are convinced that neither the Union nor the Association considered Pat Governale a party to this contract. As Pat Governale is not bound by this contract, we also find that her successor, Governale & Drew, Inc., the Employer-Petitioner, is not bound. Accordingly, we find that the association-wide agreement between the Union and the Association is not a bar to this proceeding.

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.

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

All production employees at the Employer's plant located at 1235 West El Segundo Boulevard, Compton, California, including shipping and receiving department employees, but excluding office employees and supervisors as defined in the Act.

5. The Union contends that an election should not be directed at this time because the Employer contemplates expanding its operations once the strike, which was still going on at the time of the hearing, is terminated. On the day of the strike, the Employer had a plant in Los Angeles which covered 1,800 square feet of space. It also had 22 employees, of whom 8 were machine operators. Before the commencement of the strike, the Employer had leased a considerably larger plant in Compton, California, for this purpose. Following the strike, the Employer decided to contract out its manufacturing operations. It thereupon returned some of the machinery which it had rented, reduced its staff, and transferred all operations to the new Compton plant. The Employer indicated at the hearing that it is satisfied with its present method of operations and that it does not contemplate any change in such operations, regardless of the outcome of the strike.

As the present group of employees in the unit constitutes a substantial and representative segment of the eventual complement to be employed, and as the Employer does not plan to change its method of operations or to increase the number of its employees in the immediate future, we see no reason for departing from the Board's usual policy of directing an immediate election.⁵

[Text of Direction of Election omitted from publication.]

⁵Courtaulds (Alabama) Inc., 102 NLRB 1609; Precision Mfg. Co., 88 NLRB 509; Watson Brothers Transportation Co., Inc., 89 NLRB 71.