

HYDRAULICS UNLIMITED MANUFACTURING CO. *and* KENNETH ORR, Petitioner *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. Case No. 30-UD-3. March 19, 1954

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (e) of the National Labor Relations Act, a hearing was held before Eugene Hoffman, 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 organization involved claims to represent certain employees of the Employer.

3. On June 25, 1953, the Employer and the Union entered into a 1-year collective-bargaining contract which contains a union-security provision. The petition in this case was filed on October 16, 1953, and seeks an election to rescind the Union's authority to make a union-security agreement.

The Union contends that the contract is a bar to this proceeding, and that the Board is precluded from conducting an election to nullify the union-security clause because the Union had consented to a settlement agreement in a prior unfair labor practice case¹ only in consideration of the Employer's acceptance of the union-security clause. The Union also contends that the Petitioner was disqualified to file the instant petition because he is the brother of the Employer's plant superintendent.

The Board has long held that normal contract-bar principles established by the Board cannot be applied to union-shop deauthorization cases.² There is no merit in the Union's contention that the Board is estopped from ordering an election because of the Employer's and the Union's settlement agreement of an unfair labor practice case, which culminated in a contract embodying a union-security clause. Again, it has long been established that employee rights guaranteed by Section 9 (e) of the Act cannot be bargained away by a private agreement in derogation of their statutory rights.³ Accordingly, we find,

¹30-CA-306.

²Great Atlantic and Pacific Tea Company (National Bakery Division), 100 NLRB 1494.

³In his dissent Member Murdock characterizes the present case as "a clear example of what may be accomplished through employer exploitation of the loopholes" created by The Great Atlantic and Pacific Tea Company and International Metal Products cases. The dissent implies that the Employer first agreed to incorporate a union-security clause in a collective-bargaining contract as consideration for the settlement of unfair labor practice charges and then procured the filing of the deauthorization petition in order to avoid his agreement. This is based on the assumption that this petition was inspired by the Employer. But, there is not a scintilla of evidence that the Employer is in any way responsible for the present petition.

in accordance with Board precedent, that the existing collective-bargaining contract is not a bar to the present proceeding.

Uncontroverted testimony of the Petitioner shows that Lester Orr, the Petitioner's brother and plant superintendent, did not participate in the decision to circulate, or in the actual circulation of, the petition. In fact, he appears to have been unaware of the petition until after the necessary signatures were obtained. There is no evidence whatsoever that the Employer was responsible for the petition, and we find no reason to assume, merely on the basis of Kenneth Orr's family relationship to the plant superintendent, that the petition was inspired by the Employer and does not express the desires of the employees who signed it.⁴ This election will be conducted under Board auspices and all of the employees will have an opportunity to exercise their franchise in an atmosphere of free choice. This will be the true test of their desires.

We find, therefore, that the petition in this case has been properly filed and complies in all respect with the provisions of Section 9 (e) of the Act.

4. All production and maintenance employees at the Employer's Eaton, Colorado, plant, excluding office and clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of an election under Section 9 (e) (1) of the Act.

[Text of Direction of Election omitted from publication.]

Member, Murdock, dissenting:

I cannot concur in the majority opinion which grants a union-shop deauthorization election herein. The events which took place in this case comprise a graphic illustration of how clever maneuvering may make use of doctrines of this Board, which I have protested against, to frustrate collective bargaining and injure the rights of employees and their representatives. I submit that such a result is neither necessary nor outside our power to prevent. Accordingly, I would dismiss the petition filed herein.

The facts as shown by the record are, briefly, these: The Employer operates a small shop with about 18 employees engaged in the manufacture of hydraulic hoists. The Union was certified as representative of these employees on March 25, 1953, following a consent election. Several days prior to the certification, the Union filed charges under the Act alleging violations by the Employer of Section 8 (a) (1), (3), and (5). Confronted with these charges the Employer offered to sign a contract with the Union containing a lawful union-security provision if the Union would sign a settlement agreement providing for the posting of a notice but no further Board disposition of the charges or additional remedy. The Union accepted and a contract incorporating a union shop was signed

⁴Cf. International Metal Products Co., 107 NLRB 65

on June 25. In the meantime other conduct took place and the Union filed a further charge alleging that the Employer violated Section 8 (a) (1) and (3), a case now on appeal in the office of the General Counsel. Thereafter, on October 16, the brother of the plant superintendent filed the instant petition. The Union attacks the validity of this petition on the grounds that it is in conflict with the arrangement reached by the parties in regard to the settlement agreement and because of the relationship between the Petitioner and the Employer's plant superintendent. My colleagues find neither of these grounds to be meritorious and grant an election as requested.

The instant situation again makes clear the very real threats to the integrity and stability of bargaining relationships and employee rights inherent in the Board's recent decisions concerning deauthorization elections and inclusion of relatives of management in bargaining units.⁵ In The Great Atlantic & Pacific Tea Company⁶ case, recently affirmed by my colleagues in F. W. Woolworth Company,⁷ the Board held that a deauthorization election might be held at any time during the life of a contract and that a favorable vote would immediately, in midcontract, invalidate the union-security provisions of a contract. In International Metal Products Company,⁸ my colleagues reversed the long-standing rule of this Agency that close relatives of management would not be included in bargaining units because of their divergence of interest and loyalty. In dissenting opinions in those cases, I pointed out certain inevitable consequences which would arise from those rulings. Although I now deem myself bound by the majority decisions in those instances, I think that it is both pertinent and appropriate to note that those ill results which I predicted are now present. The instant case provides a clear example of what may be accomplished through employer exploitation of the loopholes created by those decisions. In this instance, however, the Board is afforded an opportunity of at least checking such exploitation and it is on the basis of the majority's failure to do so that I must again dissent.

The Employer in this case avoided a Board determination of apparently well-founded charges that it had committed certain unfair labor practices designed to prevent unionization and collective bargaining by its employees. This avoidance was accomplished by gaining the consent of the Union to a settlement agreement providing for a cautionary notice as the only remedial action for the situation created by the unfair labor practices charged. It is obvious that the Union accepted this avenue of settlement in exchange for a

⁵ In this regard, see also Accurate Molding Corp., 107 NLRB 1087.

⁶ 100 NLRB 1494.

⁷ 107 NLRB 671.

⁸ 107 NLRB 65.

contract providing for union security in the thought that the latter would provide a measure of protection for collective action in the plant. A Board determination of the charges would ensue only after lengthy proceedings and the passage of considerable time. A union-security contract, on the other hand, offered an opportunity for immediate, albeit limited, protection for the employees and their representatives. This protection, however, is now imperiled through the transparent guise of a petition submitted by an intimate relation of the same management forces which fought the Union in the first place.

Under these circumstances, I do not believe that it is enough to state, as do my colleagues, that the petition is proper because "employee rights guaranteed by Section 9 (e) of the Act cannot be bargained away by a private agreement." This Board is not concerned alone with deauthorization elections but is charged by the Statute with the basic duty of protecting the broad rights of employees as set forth in Section 7 to engage, or not engage, in collective action free from interference by others. The limited privilege of petitioning for deauthorization elections is subsidiary to, and derived from, those broader rights. In this instance, the decision of the majority exalts the limited privilege to the detriment of those broader rights.

Even if we are to concern ourselves only with Section 9 (e), however, it is plain that the Act does not contemplate the type of petition filed herein. Section 9 (e) specifically reserves the privilege of petitioning for deauthorization elections to "employees in a bargaining unit" covered by the union-security contract. As I pointed out in my dissenting opinion in International Metal Products Company, supra, for 18 years this Board, in its expert capacity, has excluded close relatives of management from such bargaining units on the ground that their relationship made their interests and loyalty different from those of other employees and that their inclusion would be a source of unrest and suspicion. My colleagues overruled that policy with the finding that "the mere coincidence of a family relationship between an employee and his employer does not negate the mutuality of employment interest which an individual shares with fellow employees, absent evidence that because of such relationship he enjoys a special status which allies his interests with those of management." (Emphasis supplied.) Apparently my colleagues are unwilling to conclude under the circumstances here present that the Petitioner has such a "special status" which would warrant his exclusion from the unit and hence from the right to file a UD petition. What are the circumstances? Confronted with charges of unfair labor practices filed with this Board, this Employer gains a settlement by signing the instant contract. Hard on the heels of this agreement comes the instant petition designed to render useless the very union-

security provisions used to entice the Union from prosecuting the unfair labor practices it had charged. The moving force behind this petition is the brother of the superintendent of a plant employing only 18 workers. These facts of record suggest to me that Petitioner has "a special status which allies his interests with those of management" demanded by my colleagues for exclusion of relatives from bargaining units. Confronted with these facts and a petition of such dubious parentage, it strikes me that the Board blinds itself to reality when it states that there is no "reason to assume, merely on the basis of Kenneth Orr's family relationship to the plant superintendent, that the petition was inspired by the Employer and does not express the desires of the employees who signed it." Rather it is apparent that this Petitioner, Kenneth Orr, is neither eligible for inclusion in the bargaining unit, nor, as a result eligible to file the instant petition designed to further the interests of the management with which he is so intimately tied. Moreover, if the circumstances here present are not deemed sufficient to show "special status," then I advert to the criticism of the new doctrine I made in my dissent in International Metal Products--that such evidence of necessity and design on the part of the participants would be difficult to obtain. The Board's old policy on exclusion of relatives would have precluded the abuse which is here permitted to stand.

For these reasons, accordingly, I must dissent from the direction of an election herein, and would, instead, dismiss the petition.

Member Beeson took no part in the consideration of the above Decision and Direction of Election.