

FRANCIS PLATING CO., PETITIONER *and* METAL POLISHERS, BUFFERS, PLATERS & HELPERS INTERNATIONAL UNION, LOCAL 128, AFL.
Case No. 20-RM-139. July 7, 1954

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 Karin A. Nelson, 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.¹

2. The labor organization involved claims to represent certain employees of the Employer.

3. 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.

The Employer is engaged in the business of chrome plating. It filed the instant petition seeking a present determination of the bargaining representative of its production employees at its Modesto, California, plant. At the hearing, the sole testimony was presented by Union Representative Mannebach. The testimony shows that in August 1953 Mannebach visited the Modesto plant and discussed with the Employer the Union's desire to organize the plant and "to have a union contract"; and that the Employer permitted him to go into the shop that day to speak to the employees. Mannebach further testified that he left with the Employer at this meeting a copy of a contract, which was "for informational purposes only so he [the Employer] could be familiar with the Union contract in the area," but that no request was made that the Employer sign the contract. The contract was not placed in evidence, and its contents were not revealed at the hearing. No further meeting took place between the Union and the Employer. On January 14, 1954, the Union sent the Employer a letter, as follows:

After many calls at your place of business and repeated attempts to contact you by phone, it has been impossible for me to contact you for the purpose of discussing the matter of a Union contract with our organization and your shop.

I believe that before the Union takes any organizing action it would be to our mutual interests to discuss this matter.

¹ See *Hollow Tree Lumber Co.*, 91 NLRB 635. Chairman Farmer and Members Rodgers and Beeson, in agreeing to assert jurisdiction in this case, are not thereby to be deemed as concurring in the Board's past jurisdictional standards as a permanent policy.

I am willing to meet at your office in Modesto any time at your convenience Wednesday, Thursday or Friday, January 20, 21, 22. Please write or phone our office, Market 1-1414, if this meeting can be arranged as the Union will withhold [sic] any direct action until after this meeting.

Mannebach testified that the Union's only reason for sending the January 14 letter was to discuss with the Employer methods of organizing the employees, without having to resort to picketing. On January 22, 1954, the Union commenced to picket the Employer's plant and has continued such picketing to the time of the hearing. The placard carried by the Union's picket at first bore just the name of the union local, the AFL insignia, and the word "Picket." Several days later the placard was changed to read "This is not a union shop. Please cooperate with us to get area conditions of this trade for this shop." Mannebach testified that the Union never requested recognition of the Employer at any time. As of March 23, 1954, the Union formally notified the Board that it does not at present claim to represent the employees of the Employer.

The Employer contends that the Union made a demand for recognition sufficient to support the petition, and that by its current picketing activities, the Union casts doubt on the meaning of the disclaimer of interest in representation the Union filed with the Board.

It is not clear on this record whether the Union, in its initial contacts with the Employer, made a demand that it be recognized as the bargaining representative of the employees involved. However, we need not decide this question. The Union's subsequent disclaimer filed with the Board would be sufficient to remove the question concerning representation necessary to support the Employer's petition—provided the disclaimer is clear and unequivocal, and the Union has not concurrently taken any other action inconsistent with an unequivocal denial that it claims to represent the employees.²

We believe the Union's current picketing activities cannot be reconciled with its disclaimer of interest in representing the employees. As publicized, the purpose of the picketing is "to get area conditions of this trade for this shop." Such conduct on the part of the Union is construed by the Board as an attempt to secure, by means of picketing, conditions and concessions normally obtained as a result of collective bargaining. The Union is thus seeking to compel the Employer to bargain with it without regard to the question of the Union's status as representative of the employees. We find, there-

² See, e. g., *McAllister Transfer, Inc.*, 105 NLRB 751; *Hamilton's Ltd.*, 93 NLRB 1076, 1078, *Smith's Hardware Co.*, 93 NLRB 1009.

fore, that the picketing is tantamount to a present demand for recognition,³ which renders ineffectual the Union's disclaimer of interest.

4. The following employees 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 Modesto, California, plant, excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

³ See *Petrie's An Operating Division of Red Robin Stores, Inc.*, 108 NLRB 1318. Although Member Peterson dissented therein, he deems himself bound by the decision of the majority in that case.

EPHRAIM HASPEL, AN INDIVIDUAL DOING BUSINESS AS EPHRAIM HASPEL and BONNAZ AND HAND EMBROIDERERS, TUCKERS, STITCHERS AND PLEATERS UNION, LOCAL 66, INTERNATIONAL LADIES GARMENT WORKERS UNION, AFL. *Case No. 2-CA-3091. July 8, 1954*

Decision and Order

On December 2, 1953, Trial Examiner Henry S. Sahn issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and Local 66 filed exceptions to the Intermediate Report and supporting briefs. Local 66 and the Respondent also requested oral argument. That request is hereby denied because the record, including the exceptions and briefs, in our opinion, adequately present the issues and the position of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings of the Trial Examiner only to the extent consistent herewith.

The Trial Examiner found that the Respondent had not violated Section 8 (a) (1) or (2) of the Act. The General Counsel and the Union except to these findings. We find merit in these exceptions.

The complaint alleged, *inter alia*, that the Respondent had violated Section 8 (a) (1) and (2) of the Act by interfering with the formation of E. Haspel Shop Union, hereinafter called the Shop Union, and