

and separate proceeding initiated by the filing of the second petition was barred by an existing contract, there is, I submit, no proceeding before the Board in which an election can be ordered. By ordering an election on the strength of the withdrawn petition in the closed case, the majority ignores not only the Board's published Rules and Regulations, but also Board precedent and sound administrative practice. For as the Board said in *Sylvania Electric Products, Inc.*, 103 NLRB 989:

The . . . proceeding having been effectively terminated [by the withdrawal of the petition] there was . . . no proceeding pending in which the election . . . could be held.

Furthermore, the majority's decision is contrary to sound administrative practice. The Papermakers had available to it adequate remedy to challenge the Regional Officer's position that the original petition was untimely filed. It could have refused to heed the Regional Officer's recommendation, awaited the Regional Director's dismissal of the petition, and then appealed the dismissal to the Board. It did not choose to utilize Board procedure to advocate its position, but voluntarily withdrew its petition. Unless the Board insists that parties employ prescribed legal remedies in prosecuting their claims, there can be no finality to Board proceedings.

For the above stated reasons, I would refuse to entertain the Papermakers' first petition and would dismiss the second petition as being barred by contract.

MEMBER PETERSON took no part in the consideration of the above Decision and Direction of Elections.

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AMERICAN BRAKE SHOE COMPANY, SOUTHERN WHEEL DIVISION and INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, PETITIONER. *Case No. 10-RC-2798. September 10, 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 David L. Trezise, 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<sup>1</sup> is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The Employer's name appears as amended at the hearing.  
109 NLRB No. 180.

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.

4. In accordance with the agreement of the parties, we find that 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 and maintenance employees at the Employer's Calera, Alabama, plant, excluding executive, administrative, and professional employees, foremen, assistant foremen, and supervisors in charge of any class of labor, special apprentices in training for supervisory or sales positions, inspectors, assistant inspectors, technical employees, office employees, office clerical employees, plant clerical employees, watchmen, guards, and all other supervisors as defined in the Act.

5. The Employer contends that the petition is premature because of contemplated expansion of the unit. The plant began in February 1954, with 20 employees, to manufacture cast steel railroad car wheels, a new product. At the time of the hearing, June 17, 1954, there were 30 employees in 13 classifications, two-thirds of the plant building had been built, 25 percent of the equipment was installed, and the plant was producing 24 car wheels a day. None of the products had, however, been placed on the market. The Employer plans to produce 400 wheels a day, with 120-150 employees in 30-35 different classifications, when full production is reached, and hopes to reach full production within a year's time. However, the plant superintendent testified that the Employer has encountered "serious stumbling blocks to capacity production." He further stated that, "even with prompt solution of these problems, it will be at least another year before we can reasonably expect to reach rated production capacity." He could not give a definite date when production would be increased beyond the present rate, nor could he approximate the number of employees that would be added each month.

Under these circumstances, it appears that the contemplated expansion is uncertain, and that the present employee complement is a substantial and representative segment of those to be employed in the foreseeable future. Accordingly, we see no reason for departing from the Board's usual policy of directing an immediate election.<sup>2</sup>

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

<sup>2</sup> *R. P. Scherer Corporation*, 95 NLRB 1426; *Oliver Iron and Steel Corporation*, 98 NLRB 1110