

CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, has been designated and selected by a majority of employees of the Employer in the unit heretofore found appropriate as their representative for the purposes of bargaining, and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive bargaining agent of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

LARIS MOTOR SALES, INC. *and* DALL NOLDER, Petitioner
and INTERNATIONAL ASSOCIATION OF MACHINISTS,
LODGE 1060, DISTRICT 63, AFL

LARIS MOTOR SALES, INC. *and* FRED VARLICKI, Petitioner
and INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA, AUTOMOTIVE CHAUFFEURS, PARTS &
GARAGE EMPLOYEES, LOCAL 926, AFL. Cases Nos.
6-RD-83 and 6-RD-84. May 21, 1953

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon petitions for decertification duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph C. Thackery, hearing officer. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Peterson].

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 Petitioners, employees of the Employer, assert that the Unions are no longer the representatives of certain employees of the Employer, as defined in Section 9 (a) of the Act. The Unions are labor organizations which are the currently recognized representatives of the employees in question.

3. In Case No. 6-RD-84, the Union contends, among others, that the petition should be dismissed on the ground that the Petitioner, Varlicki, is admittedly a supervisor. The Petitioner urges his right to file the petition on the ground that he became a member of the Union upon the demand of the Employer's representative who stated that the Union insisted upon Varlicki's membership in the Union.

We find merit in the Union's position. Varlicki testified that he had always acted in a supervisory capacity both before and after the certification of the Union. The question of whether an unfair labor practice has been committed in compelling Varlicki to join the Union is not before us. We therefore find, in conformity with established Board policy, that as Varlicki is a supervisor within the meaning of the Act, he is ineligible to represent the Employer's employees in this proceeding.¹

As no question affecting commerce exists in Case No. 6-RD-84 concerning the representation of the employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, we shall therefore dismiss the petition in this case.²

In Case No. 6-RD-83, a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.³

4. The appropriate unit:

In Case No. 6-RD-83, the Union moved to dismiss the proceeding on the ground that the unit of service employees sought to be decertified and limited to the employees of the Employer alone, is inappropriate. The Employer and the Petitioner urge that the unit is appropriate because the Employer had resigned from the Association at a proper time.

The Union (IAM) was certified in May 1951 for the unit in question. Thereafter, the Allegheny County Automotive Service Association, of which the Employer was a member, bargained jointly with the Union on behalf of its employer-members, and on May 5, 1952, the Association and the Union executed a contract effective until May 4, 1953, unless renewed under its 60-day automatic renewal provision. On March 3, 1953, Nolder filed the instant petition, and on March 11, 1953, the Employer resigned from the Association.

The Union contends that the unit is inappropriate on the ground that the Employer's resignation was received after the filing of the petition and was therefore untimely and upon the further ground that the resignation was tendered at the request of and upon the insistence of the Petitioner. The Employer admits it resigned at the request of the Petitioner, who, on behalf of himself and other employees, threatened to quit if the Employer did not resign from the Association.⁴

On the issue of the timeliness of the resignation, the evidence shows that the contract between the Association

¹ Coast Drum and Box Company, 96 NLRB 1135.

²For a consideration of other issues raised by the Union, see Case No. 6-RD-83, infra.

³There is no contention that Petitioner Nolder in Case No. 6-RD-83 is a supervisor or that he is otherwise incapable of maintaining the decertification petition in that proceeding covering a different group of employees.

⁴The Petitioner testified that he and his fellow employees wished to leave the Union on the ground that under the union contract they were allowed to work only 40 hours a week, which did not enable them to earn an adequate livelihood, and for this reason urged the Employer to leave the Association or they would quit.

and the Union will expire May 4, 1953,⁵ and that the Employer resigned on March 11, less than 2 months from this expiration date. The Board has held that resignation by an employer from an association near the end of the contract term is appropriate.⁶ Nor do we find merit in the contention that the Employer's resignation was untimely because it occurred subsequent to the filing of the petition. In the absence of evidence that the Employer evinced an intention to continue the joint bargaining, we will give effect to an Employer's expressed desire either before or at the date of the hearing to pursue an individual course of action in its labor relations, despite a history of multiemployer bargaining.⁷

We also find no merit in the Union's contention that the Employer's resignation was improper because tendered as a result of the Petitioner's alleged coercive conduct. What the Union is here contending is that the acts of the Petitioner and his fellow workers are, in effect, violations of Section 8 (b) (2) of the Act. Such contention is, however, not properly before us, as it does not appear that any unfair labor practice charges to this effect have been filed or that any complaint has issued thereon. It is well established in Board decisions that the Board may not consider in a representation case the merits of unfair labor practice charges upon which the General Counsel had not seen fit to issue a complaint.⁸

Although the Board will not process a decertification petition where it appears that the petition was inspired or fostered by the employer,⁹ there is no evidence in this record that the Employer either inspired or fostered the present petition which was filed independently by the Petitioner without aid or suggestion from the Employer. The mere fact that since the filing of the petition, the Employer has indirectly aided the Petitioner by resigning from the Association, thereby making possible an appropriate unit within the scope of the decertification petition, is not, in our view, equivalent to a finding that the Employer inspired or fostered such petition.¹⁰

We find, in accordance with the agreement of the parties, that the following employees of the Employer constitute a

⁵There is no specific evidence that the contract was not renewed under the automatic renewal provision. However, there is no contention of a contract bar on the ground that the contract had been renewed. In view thereof and because the Union's representative stated at the hearing, which took place after the automatic renewal date, that the contract would expire on May 4, 1953, we infer that written notice had been given to reopen the contract as required by the renewal provision.

⁶Engineering Metal Products Corporation, 92 NLRB 823; cf. W. S. Ponton, of N. J., Inc. 95 NLRB 581.

⁷Stamford Wall Paper, Inc., 92 NLRB 1173; Milk and Ice Cream Dealers of Greater Cincinnati Area, 94 NLRB 23.

⁸Times Square Stores Corporation, 79 NLRB 361.

⁹Morganton Full Fashioned Hosiery Company et al., 102 NLRB 134, and cases cited therein.

¹⁰In determining whether or not a decertification petitioner is to be considered the agent of the employer, the Board has looked primarily to the relationship existing as of the time of filing the petition. See Kraft Foods Company, 97 NLRB 1097.

unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All journeymen mechanics employed at the Employer's plant at Ambridge, Pennsylvania, including mechanics' helpers, mechanic apprentices, maintenance men, body and fender mechanics, helpers and apprentices and their group leaders, but excluding all office and clerical employees, salesmen, service employees, parts department employees, washers, lubrication men, janitors, towing employees, undercoating employees, service station employees, guards, professional employees, and supervisors as defined in the Act.

ORDER

IT IS HEREBY ORDERED that the petition filed herein in Case No. 6-RD-84, be, and it hereby is, dismissed.

[Text of Direction of Election omitted from publication.]

FULLANA CONSTRUCTION CO., INC. (EXTENSION SAN AGUSTIN PROJECT, RIO PIEDRAS) and UNION DE TRABAJADORES DE LA CONSTRUCTION Y RAMAS ANEXAS DE PUERTO RICO, (UGT), Petitioner. Case No. 24-RC-542. May 21, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Francisco Romero, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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. No 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, for the following reasons:

The Petitioner seeks the establishment of a bargaining unit of the employees working in the Employer's construction project called Extension San Agustin Project. The Employer contends that an election¹ held on August 14, 1952, in a unit of

¹ That election was conducted by order of the Board in Fullana Construction Company, 24-RC-336, issued July 17, 1952.