

JEWETT & SHERMAN Co., PETITIONER *and* WAREHOUSE EMPLOYEES LOCAL UNION No. 570, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL.  
*Case No. 5-RM-268. November 8, 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 Louis Aronin, 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 26, 1952, following a consent election in Case No. 5-RC-1097, the Union was certified as the exclusive bargaining representative of the production and maintenance employees in the unit described by the Employer in its petition herein. The most recent agreement of the parties was executed on October 26, 1953, effective for a period of 1 year from October 1, 1953, and from year to year thereafter unless modified or terminated by either party on 60 days' notice to the other. On July 22, 1954, the Union notified the Employer that it desired to negotiate changes in their agreement. On July 29, 1954, the Employer notified the Union that it would terminate the agreement on its expiration and, as it doubted that the Union represented a majority of its employees, the Employer stated that it would seek to have the Board determine the employees' choice as to a bargaining representative. On August 3, 1954, the Employer filed its representation petition.

At the hearing, the Union moved to dismiss the Employer's petition, contending that no question of representation existed on the grounds that: (1) The Employer did not in good faith challenge the Union's majority status, and, therefore, the Board should, under the circumstances, order the Employer to bargain with the Union without the necessity of conducting a representation election; and (2) that the Employer's unfair labor practices (with respect to which the Union had filed charges against the Employer) made a free election at the present time impossible.<sup>1</sup> These contentions are without merit.

<sup>1</sup>The record shows that on September 2, 1954, the Union filed unfair labor practice charges against the Employer alleging violations of Section 8 (a) (1) and (5) of the Act. After an investigation of such charges by the Regional Director, the Employer on September 9, 1954, executed a settlement agreement, agreeing to post the customary (8) (a) (1) notice. This settlement agreement was approved by the Regional Director. We are administratively advised that on September 9, 1954, following the execution of

The Board has held that a union's request for a new contract was the equivalent of a new demand for recognition, which, when denied by the employer, raises a question concerning representation which the employer is entitled to have resolved by an election. The good faith of the employer in refusing to grant continued recognition, or the legality of its refusal under Section 8 (a) (5) of the Act, the Board has stated, are not properly before it in a representation proceeding.<sup>2</sup> Under the circumstances, 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. Accordingly, we deny the Union's motion to dismiss the petition herein.

4. We find that all production and maintenance employees at the Employer's Baltimore, Maryland, food processing plant, excluding office clerical employees, guards, watchmen, professional employees, truckdrivers, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>3</sup>

[Text of Direction of Election omitted from publication.]

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the settlement agreement and the posting of the notice, the Regional Director dismissed the unfair labor practice charges. The Union appealed this dismissal to the General Counsel, and apparently such appeal is now pending. In these circumstances, we are of the opinion that it will best effectuate the policies of the Act to direct an election herein, even though an appeal from the dismissal of the unfair labor practice charges is pending before the General Counsel. (See *McQuay, Incorporated*, 107 NLRB 787.) However, we shall make the Direction of Election herein contingent on the Employer's compliance with the settlement agreement; accordingly, we hereby direct the Regional Director to conduct such election at a time when he has determined that compliance by the Employer has been effected and that no intervening unfair labor practices make a free election impossible. (See *Inyo Lumber Company*, 92 NLRB 1267, 1268, footnote 2; *Personal Products Corporation*, 108 NLRB 1129.)

<sup>2</sup> *Philadelphia Electric Company*, 95 NLRB 71; *Andrews Industries, Inc.*, 105 NLRB 946.

<sup>3</sup> The unit found appropriate conforms to the unit certified by the Board in 1952 and described in the parties' most recent agreement.

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THE VENDO COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 71, AFL, PETITIONER. *Case No. 17-RC-1832. November 8, 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 William J. Cassidy, 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.