

The Board, on December 16, 1954, denied the Union's motion to quash and extended the time to respond to the aforesaid notice to show cause to January 17, 1955.

Thereafter, by letter to the Board dated January 12, 1955, counsel for the Union stated that the Union "is prepared to demonstrate to your Chief Field Examiner in the 20th Regional Office . . . that it has complied with Section 9 (f) (B) (2) and (g) of the Act . . . upon his request." The Union made no further response.

The Board, having duly considered the matter, finds that said letter of January 12, 1955, does not show sufficient cause in response to the Board's notice to show cause why a determination of noncompliance should not issue. The Union's statement that it "is" prepared to show that it has met all of the conditions necessary to valid compliance status—not to the Board, as directed, but to its Chief Field Examiner in San Francisco, upon his further request—is an utter failure to comply with the Board's order in this proceeding. The order was clear and unequivocal, and the Union chose to disregard it completely. Accordingly, no cause having been shown why the Board should not proceed as indicated in the aforesaid notice, and in the interest of protecting its own processes from abuse, we find that National Union of Marine Cooks and Stewards, Independent, has failed to show that it has furnished to all its members copies of its financial report, as prescribed in Section 9 (f) (B) (2) and (g) of the Act, and therefore, has not fully complied with said provisions of the Act, and

IT IS HEREBY ADMINISTRATIVELY DETERMINED that National Union of Marine Cooks and Stewards, Independent, has not been and is not now in compliance with the requirements of Section 9 (f) (B) (2) and (g) of the Act.

IT IS THEREFORE ORDERED that no further benefits under the Act be accorded to National Union of Marine Cooks and Stewards, Independent, or to any of its affiliates or constituent units, until the Union has complied with the requirements of Section 9 (f) (B) (2) and (g) of the Act.

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INTERBORO CHEVROLET Co., INC. and JOHN J. ROBINSON, JR., PETITIONER and LOCAL 596, GARAGE, PARKING AND SERVICE STATION EMPLOYEES' UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL AND LOCAL 724, DISTRICT 1, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. *Case No. 4-RD-142. February 25, 1955*

### 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 Joseph A. Weston, hearing 111 NLRB No. 127.

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Upon the entire record in this case, the Board finds:

1. The Employer sells and services motor vehicles at its place of business located at Glenolden, Pennsylvania. In 1953 it made out-of-State purchases valued in excess of \$1,000,000. During the period from January to November 1954, the Employer's out-of-State purchases were valued at approximately \$989,500. Upon the foregoing facts, and the entire record, we find, contrary to the Unions' contention, that it will effectuate the policies of the Act to assert jurisdiction in this case.<sup>2</sup>

2. The Petitioner asserts that the Unions are no longer the bargaining representative, as defined in Section 9 (a) of the Act, of certain employees of the Employer. As appears below, the Unions are currently recognized by the Employer as the collective-bargaining representative of the employees involved.

3. On September 16, 1954, the Unions and the Employer conducted an election among the employees designated in the petition pursuant to an agreement in which the Unions agreed that they would not "seek representation" for a year if they should lose the election. A majority of the employees in the unit voted for the Unions in that election. The Employer has since recognized the Unions as the bargaining representative of its employees. The Unions contend that the aforementioned election is a bar to the instant decertification petition, which was filed on November 5, 1954.

We do not believe that sufficient safeguards are provided in the type of election in question to protect employees in the exercise of their choice of a bargaining representative, and are therefore unwilling to accord to the results of such an election the same effect we would attach to a determination of representatives based upon an election conducted by a Government agency, or upon one privately conducted, but with an impartial overseer in charge, wherein the true desires of employees with respect to representation are reflected with a high degree of certainty.<sup>3</sup> We find, therefore, that the election conducted by the Employer and the Unions is no bar to a Board election at this time.

Accordingly, 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.

4. We find, in accord with the stipulation of the parties, that all automotive maintenance and service employees employed by the Em-

<sup>1</sup> For reasons set forth below, the Unions' motion to dismiss is hereby denied.

<sup>2</sup> See *Wilham T. Wilson and Mabel J. Wilson, d/b/a Wilson-Oldsmobile*, 110 NLRB 534; *Clauson's Garage Company*, 110 NLRB 1178.

<sup>3</sup> The decision in *Punch Press Repair Corporation*, 89 NLRB 614, is overruled to the extent that it is inconsistent with the views expressed herein.

ployer at its Glenolden, Pennsylvania, establishment, excluding office clerical employees, new- and used-car salesmen, watchmen, 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.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK, dissenting:

I concur in the majority's decision to overrule the principle established in the *Punch Press* case with which I have always disagreed. However, I cannot agree with the result my colleagues reach in this case for I would go one step further than they and find that the election conducted by the Employer and the Union on September 16, 1954, bars the petition filed herein less than 2 months thereafter. I can perceive no logical basis for holding, as the majority does, that the results of that secret-ballot election which, so far as the record shows, was free from any irregularities, must be disregarded by this Board merely because the election was conducted by the interested parties rather than the Board or a disinterested third party. I believe encouragement of voluntarism in collective bargaining should be of prime concern to the Board for it is the base upon which industrial stability is built. To this end, whenever possible, the Board should give effect to any voluntary arrangement agreed to by the parties for the purpose of resolving their differences without recourse to the Board's processes. In my opinion, the majority's holding in this case which limits the forum in which majority status may be determined to the Board and impartial third parties, while a step in the right direction, nevertheless constitutes an impediment to that voluntarism which we should encourage. Moreover, by limiting the parties in their selection of an election forum, the Board invites the unnecessary use of its election machinery.

I believe that where, as here, an employer and a union by agreement have conducted an election and there is nothing to indicate that the election was conducted under improper conditions or that the results would have been different had it been held under the auspices of the Board, the results of that election should be given the same effect as if it had been conducted by the Board. I suggest that the majority's refusal to do so in this case is inconsistent with the Board's contract-bar doctrine under which contracts based on voluntary recognition are found to be bars notwithstanding the absence of evidence that the contracting union represents a majority of the employees covered by the contract. In such cases the Board acts on the presumption that the union's majority status had been properly established prior to the execution of the contract. The same presumption should be made with respect to the majority status of the Union established by the

election conducted by the parties in this case. Had the election been conducted by the Board, we would refuse to conduct another election for 12 months pursuant to the statutory prohibition in Section 9 (c) (3) of the Act. I believe that the Board should give full effect to the policy of that prohibition in this case by refusing to redetermine the Union's majority status on the basis of the decertification petition filed by a dissident group of the very employees who 5 months ago selected the Union as their exclusive bargaining representative.

Accordingly, for the reasons set forth above, I would dismiss the petition filed herein.

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FLORIDA BUILDERS, INCORPORATED *and* CARPENTERS LOCAL UNION 531,  
AFFILIATED WITH GULF COAST COUNCIL OF CARPENTERS, AFFILIATED  
WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
AFL. *Case No. 10-CA-1881. February 28, 1955*

### Decision and Order

On June 18, 1954, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel entered into a stipulation setting forth various additional jurisdictional facts pertaining to the Respondent's operations. The Respondent also filed a motion to dismiss,<sup>1</sup> exceptions to the Intermediate Report, and a brief in support of its motion and exceptions.

The Board has reviewed the rulings made by the Trial Examiner 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 brief, and the entire record in the case, and finds merit in the Respondent's exceptions.<sup>2</sup>

1. As found by the Trial Examiner, Plant Superintendent Barrs asked Kermit Kessel, a foreman, whether he had heard a rumor that a union was trying to get into the plant. Barrs then instructed Kessel to report any such rumor he heard. Kessel in fact never carried out this direction. Relying on the Board's holding in the *H. N. Thayer*

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<sup>1</sup> The Respondent moved to dismiss the complaint on the ground that its operations did not satisfy the Board's jurisdictional standards. During 1953, the Respondent had an indirect inflow of goods or materials from outside the State valued in excess of \$1,000,000. This amount meets the indirect inflow standard recently announced by the Board in *Jonesboro Gram Drying Cooperative*, 110 NLRB 481. Accordingly, the Respondent's motion is denied.

<sup>2</sup> The Respondent's request for oral argument is hereby denied because the record and the Respondent's exceptions and brief adequately present the issues and the parties' positions.