

As the Petitioner has obtained a majority of the ballots cast in the election, we shall, as recommended by the Acting Regional Director, certify that labor organization as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 71, as the collective-bargaining representative of the employees of the Employer in the appropriate unit.]

Bazley and Junedale Meat Markets Company and Paul Vanderstelt, Petitioner and Local Union No. 539 of the Amalgamated Meatcutters and Butcher Workmen of North America, A. F. of L. Case No. 7-RD-195. September 15, 1955

DECISION AND DIRECTION OF ELECTION

Upon a decertification petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Russell W. Bradley, 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 Petitioner, an employee of the Employer, asserts that the Union, a labor organization currently recognized by the Employer as the exclusive bargaining representative of the employees designated in the petition, is no longer the exclusive bargaining representative as defined in Section 9 (a) of the Act.

3. The Union contends that no question concerning representation exists because it has a contract with the Employer, covering the employees designated in the petition. The Employer contends, *inter alia* that the contract cannot bar an election because it contains an illegal union-security clause.

The contract in question contains the following union-security clause:

The Union shall be the sole bargaining agent and representative of those classifications of employees covered by this AGREEMENT in collective bargaining with the Employer. A non-member may be hired by the understanding that he or she must make immediate application for membership to the Union and shall

¹ The Employer operates 43 meat markets in 6 States. The total sales of the markets are in excess of \$10,000,000. Accordingly, we find that it will effectuate the policies of the Act to assert jurisdiction in this case. *Hogue and Knott Supermarkets*, 110 NLRB 543.

thereafter maintain membership, in good standing in the Union, in order to maintain his or her employment. All new or present employees who are not members of the Union, shall become members within thirty-one (31) days or be discharged by the Employer without further recourse.

Under the Act, "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" is prohibited, except that employers and labor organizations are not precluded from entering into agreements requiring as condition of employment membership in a labor organization on or after the thirtieth day following the beginning of employment or the effective date of the contract, whichever is later.²

The contract here, in substance, conditions the hiring of new employees on their *immediate application* for membership in the Union. This condition, of itself, exceeds the degree of union security permitted by the statute³ and therefore renders the contract ineffective as a bar.⁴ The Union could promptly approve an application and, in effect, compel a new employee to become a union member before the expiration of the statutory grace period. Accordingly, we find that a question affecting commerce exists 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. In view of our decision, we find it unnecessary to determine whether, as the Employer and the Petitioner contend, the contract has terminated and hence is no longer in existence.

4. In accordance with the stipulation of the parties at the hearing, 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 employees of the Employer at its store at 183 West Western Avenue, Muskegon, Michigan, including part-time employees, but excluding cashiers, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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

² Section 8 (a) (3) and 8 (b) (2) of the Act

³ See *International Union of Operating Engineers, Local No. 12, AFL (Associated General Contractors, Southern California Chapter)*, 113 NLRB 655 Cf *Kennedy-Van Saun Manufacturing and Engineering Corporation*, 105 NLRB 575, where the contract merely required consistently with the statute, that applicants for employment agree to join the union at the expiration of the 30-day grace period

⁴ *Ira Grob, Inc.*, 110 NLRB 626; *Specialty Woodcraft, Inc.*, 107 NLRB 1066.