Curtis Brothers, Inc., Petitioner *and* Drivers, Chauffeurs and Helpers Local 639, A. F. L. *Case No. 5–RM–281. September 20, 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 William C. Humphrey, Sr., hearing officer.[1] 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 contends, and the Petitioner denies, that the Employer is engaged in commerce within the meaning of the Act according to the Board's present jurisdictional standards.[2]

The Employer is a Delaware corporation with its place of business in the District of Columbia. It is engaged in the cleaning of rugs, and in the sale, moving, and storage of furniture.

Because the Board has plenary jurisdiction over enterprises located in the District of Columbia, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over the Employer's operations.[3]

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Union seeks dismissal of the petition on the ground that no question affecting commerce exists concerning the representation of employees of the Employer.

On September 30, 1953, following an election directed by the Board in *Curtis Brothers, Incorporated, supra*, the Regional Director certified the Petitioner as the exclusive collective-bargaining representative of the Employer's drivers, helpers, warehousemen, and furniture finishers, excluding salesmen, office clerical employees, guards, and supervisors as defined in the Act. Thereafter, the parties attempted to agree on the terms of a contract covering the employees in the appropriate unit but failed to do so, in particular with respect to a union-shop provision. About February 24 or 25, 1954, the Union authorized a strike and picketing began at the Employer's plant. The pickets carried signs stating: "Curtis Brothers, Inc., On Strike, Drivers, Chauffeurs and Helpers Local 639, AFL." On February 1, 1955, the Employer filed the instant petition, covering the same unit as that described above. On or about February 16, the Union's record-

[1] The name of the Employer appears herein as amended at the hearing.

[2] On August 27, 1953, the Board issued its Decision and Direction of Election in *Curtis Brothers, Incorporated,* Case No 5–RC–1325 (not reported in printed volumes of Board Decisions and Orders), asserting jurisdiction over the Employer

[3] *M S Ginn & Company,* 114 NLRB 112

ing secretary wrote a letter to the Board's Regional Director, stating in substance that the Union was abandoning all claims to recognition as the majority bargaining representative of the employees in the unit and expressly disclaiming the right to be such representative. The letter further stated that "this disclaimer is made in good faith, and we hope is clear and unequivocal." On February 17, picketing was discontinued, but it was resumed on the following day. The pickets now carried signs stating: "Curtis Brothers, Inc., Employs Non-Union Drivers, Helpers, Warehousemen, Et Cetera," "Unfair to Teamsters Local Union 639, AFL," and "Local Union 639, Teamsters (AFL) wants employees of Curtis Brothers, Inc., to join them to gain union wages, hours and working conditions."

In support of its contention that no question concerning representation exists, the Union in effect points to its disclaimer of interest in representation, and asserts that it is presently engaged only in an attempt to organize the employees concerned herein and thus regain its former status as their majority representative. The Employer asserts that the Union's current picketing activities are inconsistent with, and thus vitiate, the efficacy of its disclaimer of interest.

A disclaimer of interest in representation must be clear and unequivocal. When a union engages in conduct inconsistent with its express disclaimer, the Board holds such disclaimer to be equivocal and therefore ineffective to remove the question concerning representation in an employer petition.[4]

We believe that the Union's current picketing activities cannot be reconciled with its disclaimer of interest in representing the employees in question. In the light of all the material facts of this case, including the certification of the Petitioner, the circumstances preceding the strike, the nature of the first signs carried by the pickets, the brief discontinuance of picketing, and its early resumption, we are convinced that the current picketing is not for the sole purpose of getting employees to join the Union, as the more recent picket signs indicate, but is tantamount to a present demand that the Employer enter into a contract with the Union without regard to the question of its majority status among the employees concerned.[5] 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] See, e. g., *McAllister Transfer, Inc.*, 105 NLRB 751, and *Kimmel Shoe Company*, 97 NLRB 127

[5] Cf. *Swee-T-Shirts, Inc*, 111 NLRB 377; *Francis Plating Co.*, 109 NLRB 35; and *Petrie's, An Operating Division of Red Robin Stores Inc.*, 108 NLRB 1318. Although Member Peterson dissented in the last case, he deems himself bound by the decision of the majority therein.

Contrary to the Union, we do not regard as controlling herein the *Hubach and Parkinson Motors* case, 88 NLRB 1202, where the Board gave effect to a union disclaimer and found no question concerning representation to exist. There, unlike the instant case, substantially all the strikers had been replaced during the strike and before the Union's disclaimer.

4. 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 drivers, helpers, warehousemen, and furniture finishers working at and out of the Employer's plant at Washington, D. C., excluding salesmen, office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Bendix Aviation Corporation, Pioneer-Central Division *and* District Lodge No. 102, International Association of Machinists, A. F. of L., Petitioner

Bendix Aviation Corporation, Pioneer-Central Division *and* International Association of Tool Craftsmen, Local No. 1, NIUC, Petitioner. *Cases Nos. 18–RC–2473 and 18–RC–2497. September 20, 1955*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Hjalmar Storlie, 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 these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.[1]

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. The IAM has separately represented the employees in the Employer's toolroom department No. 1980. It now seeks to add to this existing unit the employees of the model making experimental department No. 2000. The NIUC requests an election limited to the toolroom employees.[2] The IAM and the Employer contend the Board

[1] The IAM, Petitioner in Case No. 18–RC–2473, declined to stipulate that the NIUC, Petitioner in Case No. 18–RC–2497, is a labor organization. Upon the record in this case, and the Board's recent determinations in *J. I. Case Company*, 112 NLRB 796; *International Harvester Company, Farmall Works*, 111 NLRB 606; and *Friden Calculating Machine Co., Inc., et al.*, 110 NLRB 1618, we find the International Association of Tool Craftsmen, Local No. 1, NIUC, is a labor organization within the meaning of the Act.

[2] In its petition the NIUC requested severance of a craft unit of tool- and die-makers. At the hearing, however, the NIUC amended its petition to request all nonsalaried employees in the Employer's toolroom department. Accordingly, we deem the unit sought by the NIUC to be a departmental one, essentially coextensive with the unit that has been represented by the IAM.