In view of the foregoing, and the fact that the Petitioner has traditionally represented such employees, we find that the employees engaged in the lithographic process at the Employer's Houston plant may constitute a separate appropriate unit if they so desire. We shall not, however, make a final unit determination at this time, but shall direct that the question concerning representation which exists with regard to these employees be resolved by an election by secret ballot among the employees in the following voting group: All lithographic process employees at the Employer's plant in Houston, Texas, including pressmen, feeders, press supply or inkmen,[7] and lithographic apprentices, but excluding all other employees and supervisors as defined in the Act.

If the majority of the employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election herein is instructed to certify the Petitioner as representative for the unit described in the voting group above, which the Board finds, in that event, to be appropriate for purposes of collective bargaining. On the other hand, if a majority vote for the Intervenor,[8] they will be taken to have indicated a desire to remain in the existing plantwide unit at the Houston plant and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

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

[7] At the hearing, the Employer took no position as to the unit sought by the Petitioner but asserted generally that a question existed as to the unit placement of the press supply or inkman who handles ink plates. As this employee has special knowledge concerning lithographic inks and plates and works entirely or substantially in connection with the lithographic process, we include this category in the unit.

[8] The Intervenor requested, in the event that its unit contention be rejected, that its name be placed on the ballot "in the unit that the Board finds appropriate for purposes of collective bargaining."

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**Ruffalo's Trucking Service, Inc.** *and* **Dominick Scutella, Petitioner** *and* **International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 506, AFL-CIO.** *Case No. 3-RD-113. December 29, 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 Murray S. Freeman, 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 Petitioner asserts that the Union is no longer the bargaining representative of employees of the Employer as defined in Section 9 (a) of the Act.

3. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 506, AFL–CIO, herein called Teamsters, began an organizing campaign among the Employer's employees early in 1955, and was designated by a majority of the employees. On June 17, 1955, the Employer filed a petition (Case No. 3–RM–112). Thereafter, on June 27, 1955, the Teamsters filed unfair labor practice charges alleging a violation of Section 8 (a) (1), (3), and (5) (Case No. 3–CA–888). On July 14, 1955, a settlement agreement was executed which provided, *inter alia*, that the Employer would, upon request, bargain collectively with the Teamsters. The Employer petition was withdrawn on July 26, 1955.

The Employer and the Teamsters met on July 29, August 17, and September 20, 1955, but no collective-bargaining agreement resulted.

The instant decertification petition was filed on August 17, 1955.

On September 23, 1955, the Regional Director closed Case No. 3–CA–888, at the conclusion of the 60-day period following the settlement. On the same date the Regional Director sent a letter to the Employer and the Teamsters to that effect.

The hearing on the instant petition was held on October 20, 1955.

The Teamsters contends that the settlement agreement bars the present decertification petition as that Union is in the same position as a certified union, and a reasonable time, i. e., 1 year, should be permitted the parties within which to agree on a contract.

The Employer contends that the Teamsters is not in the same position as a certified union; that a reasonable time for the consummation of a contract has already elapsed; and that the Employer having fully complied with its obligations under the settlement agreement, an immediate election should be directed.

The Petitioner takes substantially the same position as the Employer.

In *Poole Foundry and Machine Company*,[1] the Board held that a settlement agreement containing a bargaining provision is to be treated as giving the parties "a reasonable time" within which to conclude a contract.[2] In *Dick Brothers, Inc.*,[3] the Board applied the principle of the *Poole* decision in a representation proceeding. In determining what constituted "a reasonable time," the Board has held that such

[1] 95 NLRB 34.

[2] This decision was enforced by the Court of Appeals for the Fourth Circuit in 192 F. 2d 740, cert. denied 342 U. S. 954.

[3] 110 NLRB 451.

determination necessarily depends upon the particular circumstances of each case, and that what "is reasonable in one case may not be so in another." [4]

To quote from a recent Board pronouncement in *The Daily Press* decision: [5]

> At the outset, it should be noted that a determination of what is a reasonable bargaining period must, of necessity, depend entirely upon the particular circumstances involved. What is reasonable in one case may not be so in another. Considering all the circumstances presented in the instant situation, we are satisfied that the Guild and the Employer had a sufficient amount of time in which to consummate an agreement. *In reaching this conclusion, we note that the Regional Director, who was in a position to view the bargaining relations of the parties from a much more intimate vantage point than we, has now dismissed the Guild's 8 (a) (5) charges. However, he did not do so until he reviewed the details of the meetings between the Employer and the Guild and determined that the Employer was bargaining in good faith. Indeed, we are administratively advised that the Regional Director concluded that the parties had reached an impasse in their bargaining negotiations with respect to the issue of periodic automatic wage increases. Only then did he decide that there was insufficient evidence upon which to predicate the issuance of a complaint.* [Emphasis supplied.]

In the situation now before us, the Regional Director closed Case No. 3–CA–888 as a result of an investigation which showed, to the satisfaction of the Regional Director, that the Employer had fully complied with its obligations under the settlement agreement, and had met and bargained with the Teamsters in good faith, and that indeed, the Teamsters' conduct during the period of bargaining in July, August, and September, 1955, evidenced a lack of good faith in consummating a contract.

The Regional Director was in a position to view the bargaining relations of the parties "from a much more intimate vantage point" than we, and has concluded after a thorough investigation and a complete review of the details of the meetings between the Employer and the Teamsters that the Employer had carried out in full its obligation to bargain in good faith under the settlement agreement, and had reached an impasse in their bargaining negotiations through no fault of the Employer. Indeed, as we have already indicated, he went further and found that the failure to consummate an agreement was due entirely to the conduct of the Teamsters. While we do not have

[4] *The Daily Press, Incorporated,* 112 NLRB 1434.
[5] *Ibid.*

to rely on the latter finding, we are satisfied, for the purpose of deciding this case, that the Regional Director's conclusions warrant us in finding that a reasonable period for bargaining has elapsed, in conformity with the settlement agreement, and that the settlement agreement is therefore not a bar to this proceeding.[6] We reject the Teamsters' contention that a settlement agreement must be treated as a certification and 1 year be permitted the parties within which to agree on a contract. The Board has at no time in the past regarded a settlement agreement as tantamount to a certification. Indeed, even in the case of a bargaining order, the Board has held that "the only purpose of the bargaining order is to remedy the antecedent refusal to bargain and that once this purpose has been achieved the order has no further effect."[7] Nor do we find merit in the Teamsters' contention that the filing of the decertification petition at the time it was filed serves as an impediment to the direction of an election. As already indicated, the Board has not treated a settlement agreement as equivalent to a certification. Moreover, where it appears, as it does here, that the terms of the settlement agreement have been fully complied with and the Employer has bargained in good faith as required by that agreement, we perceive no valid reason for denying the employees the right to exercise their franchise in a Board election. In reaching this result, we have carefully weighed all the factors present in this type of situation and concluded that the Regional Director's determination, based on his intimate knowledge and analysis of all the details of the bargaining negotiations, outweighs any other possible factors and considerations. In view of the foregoing, and the fact that these employees have had no election at any time, we hold that there is no impediment here to the raising of a valid question concerning representation. Accordingly, we find that the settlement agreement is no bar and shall direct an immediate election.

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. In agreement with the stipulation of the parties, we find that a unit of all drivers, driver helpers, and warehousemen employed by the Employer at its Newark, New York, terminal, excluding all office clerical employees, all other employees, professional employees, guards, and supervisors as defined by the Act, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

[6] See *National Waste Material Corp.*, 93 NLRB 477.

[7] *Northwestern Photo Engraving Company*, 106 NLRB 1067; see also *Squirrel Brand Co., Inc.*, 104 NLRB 289.

MEMBER MURDOCK, dissenting:

It is my considered judgment that the petition in this case was prematurely filed with respect to the settlement agreement and that the failure of the Regional Director to dismiss the petition constituted error which the majority has compounded by directing an election.

The Regional Director's action approved by the majority's decision violates a basic principle of Board law that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a *fair chance* to succeed."[8] [Emphasis supplied.] The Board has long recognized that such a bargaining relationship cannot properly function in the face of rival petitions which are docketed by the Board. The mere pendency of such petitions, as the Board has said, has "an intrusive and disturbing effect upon the bargaining efforts of the parties."[9] Therefore, to issue the undisturbed existence and proper functioning of a rightfully established bargaining relationship for a reasonable period of time, the Board has, as a matter of policy, refused to accept petitions filed within the minimum period of time it considers necessary to give the bargaining relationship a fair chance to succeed. Thus, where a bargaining representative has been certified as the result of a Board election, the minimum period deemed reasonable by the Board has been set at 1 year, absent unusual circumstances, and Regional Directors are required to dismiss petitions filed before the end of the certification year. Where a Board Order requiring bargaining or an agreement in settlement of unfair labor practice charges which provides for collective bargaining are involved, this minimum period is determined by the circumstances and may therefore vary from case to case.[10]

With these basic precepts in mind let use examine the facts in this case. On July 14, 1955, the Employer and the Union entered into an agreement in settlement of certain unfair labor practice charges filed by the Union in Case No. 3–CA–888. This agreement provided, *inter alia*, that the Employer would, upon request, bargain collectively with the Union. The Employer and the Union had one bargaining conference in July. The Petitioner filed his decertification petition on August 17, 1955, 34 days after the execution of the settlement agreement. On the same day the Employer and the Union met for the second time and their third and last conference was held on September 20, 1955. Thus 2 of the 3 bargaining conferences took place under the cloud of the pending petition. On September 23, 1955, the Regional Director closed Case No. 3–CA–888, concluding that the Employer had

[8] *Centr-O-Cast & Engineering Company*, 100 NLRB 1507, *Franks Bros. Co.* v. *N. L. R. B.*, 321 U. S. 702, 705.

[9] *Ibid.*

[10] See case cited in footnote 4, *supra.*

fully complied with its obligations under the settlement agreement by meeting and bargaining with the Union in good faith. Inasmuch as the petition herein was filed and docketed within what the Regional Director found was a "reasonable period of time" for the bargaining relation to function, it was clearly premature under the established Board principles set forth above. By failing to dismiss the petition forthwith the Regional Director prevented the rightfully established bargaining relationship from existing and functioning free from the intrusive and disturbing effect of rival petitions. In deciding what was a "reasonable time," the Regional Director plainly failed to give effect to the Board's determination in the *Centr-O-Cast* case, that a petition should not be permitted to be on file while an employer and a union are fulfilling a bargaining obligation, because a bargaining relationship does not have a "fair chance to succeed" under those circumstances. In this respect he erred. The Regional Director's gratuitous finding to the effect that the failure to consummate an agreement was due entirely to the conduct of the Union is, as found by the majority, irrelevant and certainly constitutes no excuse for his failure to dismiss the petition. Only by dismissing the petition at this time can the Board, in my opinion, correct the Regional Director's administrative error and preserve an important principle of Board law.

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**McCarty-Holman Company *and* Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 891, AFL–CIO,[1] Petitioner.**
*Case No. 15–RC–1214. December 29, 1955*

## SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election of the National Labor Relations Board, dated May 16, 1955, an election by secret ballot was conducted on June 3, 1955, under the direction and supervision of the Regional Director for the Fifteenth Region among certain employees of the Employer at its plant located at Jackson, Mississippi. The tally of ballots furnished the parties after the election shows the following:

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|---|---|
| Approximate Number of Eligible Voters | 38 |
| Void Ballots | 0 |
| Votes Cast for Petitioner | 29 |
| Votes Cast against Petitioner | 9 |
| Challenged Ballots | 0 |
| Valid Votes Counted | 38 |

[1] The AFL and CIO having merged we are amending the identification of the Union's affiliation.