Williard W. Shepherd and Norma D. Shepherd, d/b/a Shepherd Machinery Company, Petitioner *and* International Union of Operating Engineers, Local Union No. 12, AFL–CIO, and Teamsters' Automotive Workers Local Union No. 495, AFL–CIO.
Case No. 21–RM–380. March 8, 1956

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 Paul J. Driscoll, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Upon the entire record in this case, the Board finds:[2]

1. The Employer is engaged in commerce within the meaning of the Act.[3]

2. The labor organizations involved claim to represent certain employees of the Employer.[4]

3. The Employer is engaged in the sale and servicing of heavy duty construction equipment. It seeks a determination of the bargaining representative of employees at its establishment in Los Angeles, California. The issue is whether the Unions have demanded recognition as bargaining representative, and, if so, whether they have effectively disclaimed such interest.

The Engineers informed the Employer, in January 1955, that it was interested in negotiating a contract covering certain employees of the Employer. Thereafter, during March and April 1955, the Engineers made several attempts to discuss contract terms with the Employer, culminating in the Employer's suggestion that a Board election be held to determine the Engineers' majority status. The Engineers, however, stated that it did not desire to go to an election, whereupon the Employer filed a petition with the Board on April 8, 1955.[5] Three days later the Engineers filed a disclaimer with the Board and, on April 15, 1955, the Regional Director dismissed the petition.

Early in May, the Unions called a meeting of all "Non-Supervisory Employees of Equipment Dealers and Parts Houses" for the purpose

[1] We hereby take judicial notice of our decisions in *Casey-Metcalf Machinery Co., et al.*, 114 NLRB 1520, and *Crook Company and Shepherd Machinery Company*, 115 NLRB 23, and incorporate the records of those cases with the present record so far as is pertinent to this Decision and Direction of Election.

[2] No motions were made to amend the names of the Employer and the Unions at the hearing, however, we have amended them so as to reflect the correct designations of the parties.

[3] An official of the Employer testified at the hearing that, during the preceding calendar year, the Employer's direct out-of-State purchases exceeded $500,000 and that its direct out-of-State sales were in excess of $50,000. Accordingly, we find that it will effectuate the purposes of the Act to assert jurisdiction in this case. *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, *Crook Company, supra*.

[4] Although duly served with notice, the Unions did not appear at the hearing.

[5] Case No. 21–RM–347 (not reported in printed volumes of Board Decisions and Orders).

of ascertaining from the employees what they desired in union agreements with their employers. Following this meeting, the Unions, on May 11, 1955, sent identical letters to eight employers engaged in the sale and servicing of heavy duty construction equipment in the Los Angeles area, including the Employer in this proceeding,[6] requesting that representatives of each employer meet with the Unions on May 16, 1955 ". . . for the purpose of entering into negotiations with the Unions involved, to conclude a workable Agreement. . . ."

The Employer and the seven other employers simultaneously filed representation petitions on May 16, 1955.[7] The Unions, however, immediately filed disclaimers with the Board relating to all eight petitions. In the face of these disclaimers, the Employer, on May 20, 1955, requested permission to withdraw its petition, and this request was approved by the Regional Director on June 15, 1955.

Shortly after the Employer's request to withdraw its petition, the Unions, on about May 23, 1955, began to picket the Employer. The Teamsters withdrew its pickets around October 10, 1955, but the Employer was still being picketed by the Engineers at the time of the hearing. The instant petition was filed on December 5, 1955, and on December 7, 1955, the Engineers, but not the Teamsters, filed another disclaimer of interest with the Board.

With respect to the Engineers, that union, as shown above, filed disclaimers on three occasions as soon as petitions were filed by the Employer. After the first disclaimer, however, the Engineers made an express demand for a contract,[8] and after the second disclaimer, engaged in picketing which was still being conducted at the date of the hearing herein. In a recent unfair labor practice case involving the Engineers and the Employer, the Board found that such picketing had, as an object, the forcing of the Employer to recognize the Engineers as bargaining representative of its employees.[9]

Accordingly, we find that the third disclaimer of interest, entered by the Engineers 2 days after the present petition was filed, cannot be given credence. Such disclaimer stands on no better footing than the Engineers' prior disclaimers, which the Board has, in effect, twice

[6] These letters were signed by the Engineers and the Teamsters, jointly The other companies which received them are Casey-Metcalf Machinery Company, Crook Company, Electric Tool & Supply Company, George M Philpott Company, Inc, Shaw Sales & Service Company, Smith-Booth-Usher Company, and Brown-Bevis-Industrial Equipment Company.

[7] The petition filed by the Employer was Case No 21–RM–350 The petitions filed by the employers listed in footnote 6, above, were Cases Nos 21–RM–351 to 21–RM–357, inclusive (114 NLRB 1520)

[8] The Board held this demand to be tantamount to a demand for recognition in *Casey-Metcalf, supra* Although the Unions contended they never formally claimed to represent a majority of employees, the Board found that the Unions' May 11, 1955, letter requesting a meeting to " . conclude a workable Agreement . " was equivalent to a demand for recognition, which, when denied by the employers, was sufficient to raise a question concerning representation

[9] *Crook Company,* 115 NLRB 23, wherein the Board also found that the first two disclaimers filed by the Engineers were invalid in view of that union's inconsistent actions.

held to be invalid because of the Engineers' inconsistent conduct.[10] We further find, therefore, that the Engineers had presented the Employer with a claim to be recognized as bargaining representative for certain of its employees, and that such claim has not been effectively withdrawn.

As to the Teamsters, that union, as noted above, joined in the Engineers' contract demand on May 11, 1955. Although subsequently disclaiming in the face of a petition by the Employer, the Teamsters joined with the Engineers in commencing to picket the Employer about a week after its disclaimer. As already stated, the Board found, in the *Crook Company* case, *supra*, that such picketing on the part of the Engineers was for the purpose of obtaining recognition. While the Teamsters was not a party to that case, there is no reason to believe that its participation in such picketing was for any other purpose. We find, therefore, that such picketing was tantamount to a demand for recognition.[11] Although the Teamsters discontinued its picketing activities last October, it did not appear at the hearing in this proceeding, although duly served with notice thereof. Nor has it in any other manner denied the allegation contained in the Employer's petition that it is currently claiming to represent employees of the Employer. Accordingly, we find that the Teamsters has also made a claim for recognition as the bargaining representative for certain employees of the Employer, and that this claim has not been effectively withdrawn.

We find, therefore, 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. The Employer amended the description of its requested unit at the hearing to conform with the units found appropriate by the Board in the *Casey-Metcalf* case. For the reasons given in that case, we find that the following employees of the Employer at its establishment located at 3400 South San Gabriel River Parkway, East Los Angeles, California, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees, including mechanics, welders, helpers, machine tool operators, painters, steam cleaners, janitors, outside servicemen, shipping and receiving clerks, partsmen, warehouse employees, equipment craters and truckdrivers, but excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[10] *Crook Company, supra; Casey-Metcalf Machinery Co., supra.*

[11] *Witwer Grocer Company*, 111 NLRB 936; *Swee-T-Shirts, Inc.*, 111 NLRB 377.