

ployer, where an object thereof is to force or require any employer or person to cease doing business with American Iron and Machine Works Company.

LODGE 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 886, AFL,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

The Hertner Electric Company and Gilbert L. Cowen, Petitioner and United Electrical, Radio & Machine Workers of America Local #735 (Ind.). *Case No. 8-RD-134. March 16, 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 Weingarten, 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:

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

2. The Petitioner, an employee of the Employer, asserts that United Electrical, Radio & Machine Workers of America, Local #735 (Ind.), hereinafter referred to as the Union, is no longer the bargaining representative, as defined in Section 9 (a) of the Act, of the employees designated in the petition. The Union is the currently recognized representative of the employees in the unit designated herein.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

At the hearing, International Union, United Automobile Workers of America, AFL-CIO, herein called UAW, was permitted to intervene on the basis of a showing of interest. The Union, in its brief, contends that the petition should be dismissed on the grounds that: (1) The committee which instituted the present proceedings did so on behalf of UAW and therefore misused the Act's provision for decertification elections; and (2) the committee represented by the

¹ The hearing officer's ruling on the Employer's motion to quash certain *subpoenas duces tecum* filed by the Union, is discussed in paragraph 5, below.

Petitioner is a labor organization which has not met the filing requirements of the Act. We do not agree. As to the first ground for dismissal, assuming *arguendo* that the instant petition was filed on behalf of UAW, such fact would be no impediment to the filing of an RD petition by the Petitioner.² Moreover, UAW itself is properly an intervenor herein.³ With respect to the second basis for dismissal, as it is clear from the record that, whatever its motivations for instituting the RD petition may have been, the committee represented by the Petitioner does not purport to act as a labor organization, there is no requirement that the Petitioner be in compliance.

4. We find, in accord with the stipulation of the parties, 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 production and maintenance employees at the Employer's Elmwood Avenue, Cleveland, Ohio, plant, excluding time-study men, salaried employees, general office employees, professional employees, guards, and supervisors as defined in the Act.

5. At the hearing, the issue of voting eligibility arose as to economic strikers and their replacements. On August 1, 1955, when the Union's contract with the Employer expired and negotiations for a new contract were in progress, an economic strike was instituted. The strike was current at the time of the hearing herein. The Employer's personnel manager testified on direct examination that 90 of the strikers had been permanently replaced and that 11 had returned to their jobs.⁴ In the course of cross-examination of this witness, the Union sought by subpoenas to obtain the names of replacement employees and their personnel files, and the latest payroll for production and maintenance employees, in order to facilitate its cross-examination and to support its contentions that: (1) A large number of replacement employees were temporary; and (2) certain positions formerly held by strikers were unfilled. The Employer moved to quash the subpoenas on the ground that the information sought was not material to the eligibility issues, that a number of incidents causing or threatening harm to replacements and returning strikers had occurred during the strike, and that disclosure of the names of replacements might bring about a recurrence of such incidents. The hearing officer granted the motion to quash, stating that, in so doing, he was in effect deferring Board resolution of the eligibility issues until the election, under the

² *Ketchum & Company, Inc.*, 95 NLRB 43 footnote 1

³ See *Standard Oil Company of California*, 113 NLRB 475, *Calumet & Hecla, Inc.*, 105 NLRB 950

⁴ At the time the strike began there were 140 employees in the unit. There was also testimony on direct that 4 strikers had voluntarily terminated their employment with the Employer, that the Employer then planned to increase its plant complement by about 9 employees, and that no substantial increase in the Employer's volume of business was anticipated in the next 6 months.

procedure adopted by the Board in the *Pipe Machinery* case.⁵ The Union contends in its brief that the hearing officer's quashing of the subpoenas was improper on the ground that they called for information which was necessary for full cross-examination and relevant to the issues; accordingly, the Union urges us to reverse the hearing officer's ruling and remand the case to the region with directions to enforce the subpoenas.

We find no merit in the Union's contention and therefore deny the request for a remand. Whether or not the subpoenas requested relevant information or satisfied the requirements as to specificity, we are of the opinion that, inasmuch as the strike was still in progress at the time of the hearing, and the Board, under its *Pipe Machinery* doctrine, frequently defers eligibility issues of the type here involved until the election for disposition by way of challenges,⁶ the hearing officer committed no prejudicial error in quashing the subpoenas. His ruling on the motion to quash is therefore affirmed.

As we cannot, on the present record, determine whether the strikers have been permanently replaced, have abandoned their employment with the Employer, or have a reasonable expectancy of reemployment at the time the Employer's operations return to normal, we shall permit all persons hired since the date of the strike and all strikers to vote subject to challenge in the election hereinafter directed.⁷

The challenged ballots shall not be counted unless they affect the election results, in which case the question as to which of them shall be opened and counted shall await further investigation as to the employment status of the individuals involved.

[Text of Direction of Election omitted from publication.]

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

⁵ *The Pipe Machinery Company*, 76 NLRB 247

⁶ See *Cuttingham Buick, Inc.*, 112 NLRB 386, *Shipowners' Association of the Pacific Coast*, 100 NLRB 1250, 1258, *Frank Foundries Corporation*, 92 NLRB 1754

⁷ Nothing in this Direction should be construed as indicating that the Board has prejudged in any respect any of the questions which may be drawn in issue by a challenge to the eligibility of any voter

Detroit Marine Terminals, Inc. and Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO, and its Local No. 46, Petitioner. *Case No. 7-RC-2982. March 16, 1956*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Iris H. Meyer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.