

Andrew Brown Company, Petitioner and Steel, Paperhouse, Chemical Drivers & Helpers, Local 578, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO¹ and Paint, Varnish & Lacquer Makers Union, Local 1232, AFL-CIO.² Case No. 21-RM-379. March 21, 1956

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Karl W. Filter, 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 labor organizations involved claim to represent certain employees of the Employer.

3. Paintmakers and Teamsters contend that the petition should be dismissed on the ground that neither Union claims to represent a majority of the employees of the Employer. The Employer asserts that the current picketing of its plant is inconsistent with such disclaimer, while the Unions claim that the picketing is merely for the purpose of organizing the Employer's employees.

The record shows that for the past few years Paintmakers has attempted to induce the Employer to enter into immediate contractual relations with it. Upon the failure of one of these overtures on July 28, 1955, members of the Paintmakers began picketing the Employer's plant the next day, and continued to do so up to the time of the hearing on January 6, 1956. The pickets carry placards addressed to the public stating that the Employer's products are nonunion and are on the "We do not patronize" list of the two Unions. The signs bear the names of both Unions. The picketing is on a 24-hour a day basis and the picket signs and oral appeals of the pickets are directed to the public and to employees of suppliers or customers of the Employer rather than to the Employer's employees.

Although the evidence was conflicting as to whether Teamsters has ever actually requested the Employer to enter into contractual relations with it, it appears from the record, and we find, that on at least two occasions, on July 29, and August 1, 1955, a representative of the Teamsters accompanied a representative of the Paintmakers to conferences with the Employer, at which conferences the Paintmakers' representative requested a contract from the Employer. Moreover, a

¹ Herein called Teamsters

² Herein called Paintmakers.

representative of the Teamsters testified at the hearing that he was aware that the picket signs bore the Teamsters' name and that the Teamsters has not disavowed the picket signs. In addition, on September 30, 1955, letters signed by both Unions were sent to a number of paint companies, informing them that the Employer had been picketed for several weeks by both Unions and was on their "unfair" lists, and requesting them to patronize other firms.³

In view of the foregoing, and upon the record as a whole, we find that the current picketing is not solely for the purpose of organizing the employees, but is tantamount to a present demand for recognition of *both* Unions by the Employer, without regard to their majority status.⁴ 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. The Employer contends that only a plantwide unit is appropriate here. Teamsters contends that the truckdrivers and warehouse employees, alone, constitute an appropriate unit, and contends that the rest of the production and maintenance employees constitute a separate appropriate unit. There is no bargaining history for the Employer's employees. The Employer is engaged in the manufacture and sale of paint and paint products. The warehouse employees and truckdrivers perform the usual duties of those classifications, and the record shows that they have interests in common apart from the production and maintenance employees.⁵

In view of the homogeneity of each group, the lack of bargaining history, and the fact that neither the Painters nor the Teamsters seeks to represent them in an overall group, we find that the truckdrivers and warehouse employees, on the one hand, and the rest of the production and maintenance employees, on the other, constitute separate appropriate units.⁶

Accordingly, we find that the following groups of employees at the Employer's Los Angeles, California, plant, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

³ The Teamsters' representative admitted that he had negotiated contracts for units of truckdrivers with about 20 employers in the area with whom Paintmakers also had contracts for other employees.

⁴ *Curtis Brothers, Inc*, 114 NLRB 116. On November 16, 1955, both Unions sent letters to the Employer in which the Teamsters disclaimed any "right to represent" the Employer's employees and the Paintmakers disclaimed "any interest, or that they represent" such employees. Even if we view both these letters as a disclaimer of any interest in representing the Employer's employees, as they are inconsistent with the Unions' subsequent conduct described above, we find that such disclaimers are ineffectual to remove the question concerning representation herein.

⁵ The record does not support the Employer's contention that there is any interchange between the truckdrivers and production workers. The mere fact that 2 truckdrivers were formerly production workers does not constitute interchange such as to preclude a finding of 2 separate appropriate units.

⁶ *Dallas Transfer & Terminal Warehouse Company*, 114 NLRB 18.

(a) All production and maintenance employees, excluding all employees included in unit (b), below, all office clerical and laboratory employees, guards, watchmen, foremen, and all other supervisors as defined in the Act.

(b) All truckdrivers and warehouse employees, including the receiving clerk,⁷ but excluding all other employees, the traffic manager, and all other supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

⁷ The Employer would exclude, and Teamsters include, the receiving clerk. The duties of the receiving clerk are to receive any raw materials or goods coming into the plant and keep records of the foregoing. We find that the receiving clerk is a plant clerical employee and shall include him in the warehouse unit.

Coffey's Transfer Company, Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, General Drivers and Helpers, Local No. 554, AFL-CIO. *Case No. 17-RM-91. March 21, 1956*

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board in the above-entitled proceeding on December 12, 1955,¹ an election by secret ballot was conducted on January 24, 1956, under the direction and supervision of the Regional Director for the Seventeenth Region among the employees in the unit found appropriate. Following the election, a tally of ballots was furnished to the parties. The tally shows that there were approximately 4 eligible voters in the unit; that no votes were cast for or against the Union; and that there were 7 challenged ballots.

On January 27, 1956, the Union filed timely objections to the election, alleging in substance that: (1) Holding and processing the election while an unfair labor practice charge filed by the Union in Case No. 17-CA-1072 was in existence was contrary to Board policy; (2) at the time the election was held the time for filing an appeal to the General Counsel from the Regional Director's refusal to issue a complaint in Case No. 17-CA-1072 had not yet expired and the Union intended to appeal; and (3) by holding the election at the Employer's place of business when picket lines had been established, the Board in effect forced the strikers to go through a picket line contrary to the traditional policy of the labor movement. After an investigation, the Regional Director, on February 17, 1956, issued and served upon the parties his report on objections and challenged ballots, in which he recommended that the objections be overruled,

¹ Not reported in printed volumes of Board Decisions and Orders.