

Southeast Ohio Egg Producers and James H. Hall, Petitioner and Local Union #665, United Brick and Clay Workers of America, AFL-CIO and United Brick and Clay Workers of America, AFL-CIO.¹ *Case No. 9-RD-157. September 12, 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 Harold M. Kennedy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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, an employee of the Employer, asserts that the Unions are no longer the bargaining representative, as defined in Section 9 (a) of the Act, of the employees designated in the petition.

3. The Unions contend that the instant petition should be dismissed because (1) there was collusion between the Employer and the Petitioner in the filing of the present petition; (2) Petitioner, in effect, is fronting for a noncomplying labor organization; and (3) there is a valid contract bar.

As to the charge of unlawful Employer assistance, the record reveals that the Petitioner requested and received information from the Employer as to the procedure to be followed in obtaining and filing a petition for decertification; that the Employer furnished Petitioner with certain information necessary to complete the decertification petition; that the petition and the showing-of-interest form in support thereof were typed in the Employer's office after working hours by Petitioner's wife, admittedly a supervisor for the Employer; and that employees signed the showing-of-interest form in the Employer's office during working hours in the presence of the Petitioner.³ However,

¹ The decertification petition designated the United Brick and Clay Workers of America, AFL-CIO, hereinafter called the International, as the Union in this case. In July 1952, the Board certified the International as the bargaining representative for a unit of the Employer's production and maintenance employees. Case No. 9-RC-1657 (not reported in printed volumes of Board Decisions and Orders) Thereafter, Local Union #665, hereinafter called the Local, was formed. Both the International and the Local have been signatories of contracts with the Employer covering the employees involved herein, and the most recent such contract was in effect at the time of the hearing in this proceeding. At the hearing, Petitioner requested that the Local's name, as well as that of the International, be placed on the ballot in any election directed by the Board.

² The hearing officer referred to the Board motions by the Unions to dismiss the petition on grounds that (a) Petitioner was improperly assisted by the Employer in filing its petition; (b) Petitioner is acting as an agent of another labor organization which is not in compliance with the filing requirements of the Act, rather than as an individual; and (c) a contract between the Employer and the Unions constitutes a bar to an election. For reasons stated hereinafter in paragraph 3, *infra*, these motions are hereby denied.

³ Petitioner also admits making a phone call to the Board's Regional Office from the plant, which phone call had not been paid for by Petitioner at the time of the hearing. However, Petitioner testified further that he would reimburse the Employer from his personal funds, and that he often owed the Employer for other things, such as gasoline, which he always paid for eventually with his own money.

both Petitioner and the Employer's general manager appeared as witnesses at the hearing and testified that the Employer had not suggested the filing of the decertification petition; that it had not requested any of the employees to sign the showing-of-interest form for such a petition; that no representative of the Employer save Petitioner's wife had been present when the showing-of-interest form or the decertification petition were drawn up or signed; and that the only time that the Employer had discussed the matter of decertification with the Petitioner was when the latter took the initiative in requesting information. The Unions, although disputing this testimony, offered no evidence at the hearing to rebut or impeach it, and filed no brief. While the record shows that the Employer gave some limited assistance to Petitioner in filing this petition, such assistance was given only in response to the Petitioner's request. As there is no affirmative evidence that the Employer instigated the instant petition, we reject the Unions' first contention.⁴

With regard to the Unions' second contention, we find no merit in the allegation that Petitioner acted on behalf of a noncomplying union in filing the present petition. The record shows that the Employer moved its operations from Nelsonville, Ohio, to Somerset, Ohio, during April 1956, and that only 5 or 6 of its former employees elected to move with the plant in order to continue in the Employer's employ. These individuals regarded themselves as the only remaining members of the Local, and it was upon their behalf that Petitioner filed the instant petition. Petitioner stated at the hearing that the employees were considering the establishment of another union to represent them, but that the formation of such a labor organization would not take place until some unspecified future date, that no meetings had been held, and that, although forms had been received to be used to effect compliance with Section 9 of the Act, no action had as yet been taken along these lines. As no new union has as yet been formed, we find, contrary to the contention of the Unions, that, in filing the present decertification petition, Petitioner was not fronting for a noncomplying labor organization.⁵

Finally, the Unions contend that the petition is not timely filed with respect to a contract between them and the Employer. The International was certified, in July 1952, as bargaining representative for a unit of the Employer's production and maintenance employees at its plant located in Nelsonville, Ohio.⁶ Since that time, the International and the Local have jointly executed successive contracts covering the Employer's employees. The last contract between the

⁴ *The Belden Brick Company*, 114 NLRB 52; *Calumet & Hecla, Inc.*, 105 NLRB 950. See also *Glackamas Logging Company*, 113 NLRB 229; *Plastic Molding Corporation*, 112 NLRB 179; *Moore Drop Forging Company*, 108 NLRB 32; *Morganton Full Fashioned Hosiery Company*, 102 NLRB 134.

⁵ *Calumet & Hecla, Inc.*, *supra*. See also *Consolidated Rendering Co.*, 91 NLRB 1257.

⁶ See footnote 1, *supra*.

Unions and the Employer was entered into on October 28, 1955, to run until October 28, 1956, and from year to year thereafter absent 60 days' written notice by either party. No such notice had been given at the time of the hearing. However, the contract also provides that ". . . in the event of cessation of operations at the company's plant at the present location in Nelsonville, Ohio, and the company continues operations at a new plant in Somerset, this contract . . . shall terminate in all respects 90 days subsequent to the start of operations at the company's new location. . . ." ⁷ On April 30, 1956, the Employer commenced operations at its new plant in Somerset, Ohio. We find, therefore, that the foregoing contract terminated by its own terms on July 29, 1956. As the decertification petition was filed on May 15, 1956, we find that it was timely filed with respect to the termination date of the then existing contract, and that such contract may not operate as a bar to an election at this time. ⁸

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, an Ohio corporation, is engaged in the wholesale egg business at its plant located in Somerset, Ohio. The parties agree that the contract unit is the appropriate unit for purposes of decertification. Accordingly, we find that the following employees of the Employer at its Somerset, Ohio, plant 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, including truckdrivers and office clerical employees, but excluding guards and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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

⁷ Article 14, entitled "Termination," of the October 28, 1955, contract.

⁸ In view of our determination herein, it is unnecessary to consider other grounds for finding the contract no bar.

Alterman-Big Apple, Inc. and Truck Drivers and Helpers Local Union No. 728, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. *Case No. 10-RC-3484. September 12, 1956*

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election, executed by the parties on May 17, 1956, and approved by the Regional
116 NLRB No. 130.