

Objection (c)

As the Regional Director found that there was no credible evidence submitted to him which would support this objection alleging promises of benefit and threats of reprisal by the Employer, and as the Petitioners do not now offer any additional evidence in support thereof, we deny the Petitioners' request for a hearing on this objection.

Objection (d)

In the absence of any exception thereto, we adopt the Regional Director's recommendation that this objection be overruled.

Accordingly, as the Petitioners' objections do not raise substantial and material issues with respect to conduct affecting the results of the election, and as the Petitioners failed to secure a majority of the ballots cast in the election, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for International Molders & Foundry Workers Union of North America, AFL-CIO, Local 294, and International Association of Machinists, AFL-CIO, and that the said Joint Petitioners are not the exclusive representative of the employees in the unit heretofore found appropriate.]

Armco Drainage & Metal Products, Inc. and Stephen R. Fraher, Petitioner and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO. *Case No. 9-RD-155. October 9, 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 V. Williams, 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, an individual acting on behalf of employees of the Employer, asserts that the Union is no longer the representative, as defined in Section 9 (a) of the Act, of the employees involved herein.
3. The Union contends that the petition should be dismissed because there is an outstanding court decree enforcing a Board decision ordering the Employer to bargain with the Union.

On August 13, 1953, the Board, having found the Employer to have unlawfully refused to bargain with the Union, ordered the Employer to bargain with the Union upon request (106 NLRB 725). On February 18, 1955, the Court of Appeals for the Sixth Circuit issued a decree enforcing the Board's Order (220 F. 2d 573). Thereafter, the Employer petitioned the Supreme Court for a writ of certiorari, which petition the Court denied on October 10, 1955.

On October 26, 1955, the Union requested a bargaining conference and the Employer agreed. Between December 16, 1955, and May 10, 1956, 9 bargaining conferences consisting of some 45 to 50 hours of negotiations took place; proposals and counterproposals were exchanged and there was collateral correspondence between the parties. However, no agreement was reached.

On February 2, 1956, in response to the Regional Director's inquiry concerning the Employer's compliance with the Board's Order, the Union informed the Regional Director that the Company was then in compliance with the Board's Order and the court's decree. Accordingly, and pursuant to additional independent investigation, on March 26, 1956, the Regional Director administratively determined that the Employer had complied with the Board's Order and thereby formally closed the case. On the same date, the Regional Director sent a letter to the Employer and the Union notifying them of his action. Insofar as the record discloses the Union did not at that time voice any objection to the Regional Director's ruling. On May 8, 1956, the instant petition was filed.

Under these circumstances we do not agree with the Union's contention that it can now challenge the petition as untimely.¹ "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." *Frank's Bros. v. N. L. R. B.*, 321 U. S. 702, 705-706. When such a relationship is based on a certification, the applicable "reasonable period" is 1 year. *Ray Brooks v. N. L. R. B.*, 348 U. S. 96. However, where the relationship is established through procedures other than an election, that is, a settlement agreement or

¹ We also disagree with the Union's contention that it was denied an impartial hearing because the hearing officer herein had previously assisted in the investigation upon which the Regional Director's administrative decision as to compliance was based. The Board has repeatedly rejected similar attacks upon the qualification of its hearing officer. See e. g., *The Procter and Gamble Company*, 78 NLRB 1043, footnote 2; *Kearney and Trecker Corporation*, 101 NLRB 1577, 1594; *Sears, Roebuck and Company*, 104 NLRB 311, footnote 1.

We further reject the Union's challenge of the petition on the ground that it was filed by a labor relations consultant who represents employers in the same community in which the Company does business. Petitioner does, in fact, represent an electrical contractor which has done considerable work for Armco. However, a showing of interest in the petition has been made by more than 30 percent of the employees in question. Under these circumstances, and absent any direct evidence of Armco's sponsorship of the petition, there is in our opinion no real impediment to the petition. *Moore Drop Forging Co.*, 108 NLRB 32. Cf. *Lewis Coal Co.*, 108 NLRB 887.

bargaining order, the required bargaining period is there said to "depend entirely upon the particular circumstances involved." *Ruffalo's Trucking Service, Inc.*, 114 NLRB 1549.² Appraising the particular circumstances of a case, the Board will, barring of course, a showing of arbitrary and capricious action, follow the compliance determination made by the Regional Director who is "in a position to view the bargaining relations of the parties from a much more intimate vantage point than we." *Ruffalo's Trucking Service, Inc.*, *supra*. See, also, *Langenberg Hat Company*, 116 NLRB 198.

Accordingly, as the Regional Director, after a thorough investigation and a complete review of the details of the meetings between the Employer and the Union, has administratively determined that the Employer has fully complied with its obligation under the Board's Order and the circuit court's decree to bargain in good faith, and as the Regional Director necessarily was in a position to appraise the bargaining negotiations "from a more intimate vantage point than we," there is, in our opinion, no longer any valid reason why the employees should be denied the right to exercise their franchise in a Board election. The only purpose of a bargaining order is to remedy the antecedent refusal to bargain and that once this purpose has been achieved the order has no further effect.³ In finding that such is the case here, we have considered the fact that although entitled to administratively appeal the Regional Director's compliance determination the Union did not avail itself of that procedure and instead has belatedly chosen to question it in the instant proceedings.⁴

We therefore 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 production and maintenance employees in the Washington Court House plant of the Armco Drainage & Metal Products, Inc., including shop clerks, janitors, and watchmen, but excluding all office employees, guards, professional employees, and supervisors as defined in the Act, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

[Text of Direction of Election omitted from publication.]

² See also, *The Daily Press, Incorporated*, 112 NLRB 1434, 1441; *Northwestern Photo Engraving Co.*, 106 NLRB 1067; *Squirrel Brand Co., Inc.*, 104 NLRB 289.

³ *Northwestern Photo Engraving Co.*, *supra*.

⁴ Member Murdock joins in the decision to direct an election because he finds that this case is factually distinguishable from the *Ruffalo's* case in which he dissented, in that, unlike the situation in that case the petition herein was filed after the Regional Director issued his compliance report.

⁵ The above unit is identical to the unit described in the Board's Order in the unfair labor practice proceeding.