International Aluminum Corporation, Petitioner *and* Shopmen's Local Union No. 682, International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO. *Case No. 9–RM–140. April 17, 1957*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Thomas M. Sheeran, 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 organization involved claims to represent certain employees of the Employer.

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.

On September 28, 1956, the Employer filed its petition for an election. At the hearing, which took place October 30, 1956, the Employer moved that no election be held within 90 days from the date of the hearing because of an expanding unit and because of the expectation of new machinery and new job classifications. The Union consented to this request in order to expedite the proceedings. On January 3, 1957, within the 90-day waiting period, the Employer moved, in a motion to the Board, that no election be ordered and that the case be reopened on the ground that the Union had never made a sufficient showing of interest among the employees in the appropriate unit. On January 10, 1957, the Union responded to the motion, requesting an immediate election.

On January 29, 1957, the Board issued a ruling on motion. The Board found that, although a showing of interest is not required in a proceeding based on a petition filed by an employer,[1] the Employer's motion in this case should be construed as a request to withdraw the petition, and the Union's response, as a cross-petition. The Board therefore ordered that, unless the Union within 10 days from the date of the ruling presented the Regional Director with evidence of a current 30 percent showing of interest in the employees sought to be represented, the Employer's motion would be granted. The Board further ordered that if the Union made such a showing, the Board would order an immediate election.

Upon reconsideration of the Employer's motion to withdraw its petition, we have decided to set aside our former order requiring the union to make the 30-percent showing among the employees sought to be represented. We are of the opinion that the analogy to an inter-

[1] *Felton Oil Company*, 78 NLRB 1033

venor who opposes the withdrawal of a petition in a representation case brought by a union [2] is not applicable to employer petitions. Since an employer is not required to make any showing of the Union's interest when it files a representation petition, the Union should not thereafter be required to make such showing to insure an election when the Employer wishes to withdraw its petition. Moreover, this view is particularly compelling in the instant case as the Union consented to the Employer's request to postpone the election.[3] In addition, the Regional Director's investigation reveals that the job status of many employees has changed since the filing of the petition which places additional burdens on the Union at this time. Under the circumstances herein, we therefore shall not require the Union to make the 30-percent showing of interest at this time, but shall proceed with an immediate election.[4] Accordingly, the Employer's motion is hereby denied.

4. The appropriate unit:

The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's New Albany, Indiana, plant but excluding office clerical employees, professional employees, guards,[5] and all supervisors as defined in the Act.[6]

[The Board set aside the ruling on motion issued on January 29, 1957.]

[Text of Direction of Election [7] omitted from publication.]

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[2] See *Henry L Perrone et als d/b/a Alloy Manufacturing Company,* 107 NLRB 1201–2

[3] See *Mississippi Valley Structural Steel Co.,* 115 NLRB 1288, footnote 1, in which the Board, in denying requests for the withdrawal of petitions, has given weight to equitable considerations

[4] Insofar as this holding is inconsistent with prior cases, they are hereby overruled

[5] At the hearing, the parties agreed to include the night watchman on the ground that he carried no arms However, as the record shows that his duties are to watch the plant, we find that he is a guard within the meaning of the Act and exclude him from the unit

[6] The Employer would include the working electrician whom the Union would exclude on the ground that he is either supervisory or managerial. The evidence shows that this man is a brother of the chairman of the board of the Employer: that in the past, when engaged in construction and remodeling work at the plant he has had several people working under him, but that at the time of the hearing he worked alone or with a helper doing electrical work We find on the basis of the record that, as the electrician does not exercise supervisory duties and probably will not do so in the foreseeable future, he is not a supervisor. Nor do we find that his relationship to the chairman of the board in and of itself makes him a managerial employee *International Metal Products Company,* 107 NLRB 65–67 Accordingly, we shall include him.

[7] The Union contends that certain laid off employees are eligible to vote in the election herein directed. The record shows that a group of 6 men were laid off on September 4, 1956, and another group of 15 men on September 13. On September 26, the Union struck for recognition A few workers have been hired since that date The Employer contends that although the laid-off men were not informed that they were permanently discharged, it intends not to rehire them, either on the ground of incompetency or because the construction and remodeling on which they were engaged has been completed Accordingly, as they have no prospects of reemployment in the foreseeable future, they are not eligible to vote in the election