

2. Bakery Sales Drivers Union, Local 344, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication.]

Consolidated Blenders, Inc. and Robert L. Kinney, et al., Petitioner and American Federation of Grain Millers, Local No. 178, AFL-CIO. Case No. 17-RD-136. July 8, 1957

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William J. Cassidy, 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 Board¹ finds:

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

2. The Petitioner asserts that the Union is no longer the representative of certain employees of the Employer as defined in Section 9 (a) of the Act.

3. No 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, for the following reasons:

The Union contends that the petition should be dismissed on the ground that the Employer sponsored this decertification petition.

The Union was certified February 29, 1956. Several months of fruitless bargaining followed after which no efforts were made at further negotiations. On or about February 1957 Plant Superintendent Newsome attended a meeting of the Company's board of directors at which he was asked what was to be done about the Union and to find out how the employees felt about it. The next day, Newsome called into his office employee Bergerson, the only remaining union committeeman still employed by the Company, and one other employee, told them what the directors had asked and stated that the Company's president had said he would "take care of his boys." About this time, Petitioner Kinney asked Newsome when the Union's certification expired. Kinney then contacted Sidner, the Employer's attorney. Kinney told him that the employees wanted to decertify

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Jenkins].

the Union and asked him how and when this could be done. Sidner agreed to help and prepared a petition for the employees' signatures.² Kinney requested and obtained permission from Newsome to circulate the petition. Kinney took the petition to the employees in the plant where they signed it in the presence of Kinney on company property and, in many cases, on company time. Sidner sent the petition to the Board's Regional Office, which returned it with suggestions that it be filed on the Board's official form. Kinney thereupon took the formal petition to the employees in the plant where it was signed in the same manner as the first petition.³ Sidner, who filed the petition March 11, 1957, testified that he intended to make no charge for his services and that he was doing the work solely as a favor to the employees.

At the original hearing which opened April 3, 1957, Sidner stated that he was appearing as attorney for the employees. The hearing officer stated that he could not represent both the Employer and the employees. As the Employer was not represented and the hearing could not proceed without the necessary commerce facts for jurisdictional purposes, the hearing was adjourned to April 25. At the reopened hearing on that date, Sidner declared that he was no longer representing the employees but was representing the Employer, and that Cutright, an attorney with offices in the same building, was representing the employees. Sidner had recommended Cutright to Kinney, who personally made all the financial arrangements with Cutright and paid him a retainer of \$25 with his personal check. Kinney stated that he expected to be reimbursed for the legal fees by the employees.

After Cutright took over, he asked Newsome for permission to interview the employees individually in the plant, which permission was given. When Cutright arrived at the plant, Newsome introduced him to the first employee who was interviewed by Cutright alone in the lockerroom adjoining Newsome's office. Cutright then requested that the employees be called one after another until all the employees were interviewed. Cutright informed the employees that he had been retained by Kinney to represent them and he also asked each worker whether he wished to have an election. In contrast to this treatment of Cutright, the Union's representative testified that during bargaining negotiations, he had been prevented from speaking to one employee at the plant during the lunch hour. Newsome admitted that he had issued the order prohibiting the Union's representative from speaking to employees on company property.

² Kinney stated that at the time he went to Sidner, he did not know that Sidner was the Company's attorney. He said that he went to him because he appeared to be a busy lawyer.

³ Although Newsome testified that no supervisors signed the petition, the record shows that several of the signers were leadmen who exercised some authority to direct and be responsible for the work of the employees working under them.

In our opinion, the Employer, by its conduct in this proceeding, exceeded the bounds of neutrality imposed by the statute and thereby unlawfully intruded upon its employees' rights independently to file a decertification petition with the Board. The Employer's attorney advised the employees as to their rights in decertification proceedings, supplied the Petitioner with the decertification forms, filed the petition with the Board, and recommended another attorney only after the hearing officer made it clear that an attorney cannot represent both the Employer and the decertification petitioners. In addition, the plant superintendent permitted the decertification petition to be circulated on company time and property and also permitted the attorney for the decertification petitioners to interview each employee privately at the plant on company time, while refusing permission to the Union's representative to have access to employees on company property. Although the Board has held that certain types of assistance do not necessarily invalidate a decertification petition,⁴ in view of the foregoing and the entire record in this proceeding, we are convinced that the Employer improperly assisted the Petitioner in filing the decertification petition and that the rights of the employees to file decertification petitions under Section 9 (c) (1) (A) have been thereby abridged.⁵ Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

⁴ See *Belden Brick Company*, 114 NLRB 52; *Clackamas Logging Company*, 113 NLRB 229.

⁵ *Bond Stores, Inc.*, 116 NLRB 1929; *Gold Bond, Inc.*, 107 NLRB 1059, 1060.

Sucesion J. Serralles, Central Mercedita, Inc., and Porto Rico American Sugar Refinery, Inc. and Union de Trabajadores de Muelles y Ramas Anexas de Ponce, P. R., Local 1903, IBL-AFL-CIO, Petitioner. Case No. 24-RC-1012. July 8, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, the parties stipulated that the transcript in Case No. 24-RC-974 shall constitute the entire record in this proceeding. The hearing officer's rulings made at the hearing in Case No. 24-RC-974 are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

Upon the entire record in this case, the Board finds:

1. The Employers are engaged in commerce within the meaning of the Act.