IUOE achieves a majority of the votes in the pooled group, the Regional Director is instructed to issue a certification of representatives to that labor organization for a unit of employees in both voting groups (1) and (2) which the Board, under such circumstances, finds to be an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[The Board dismissed the petition in Case No. 19–RC–2080.]

[Text of Direction of Elections omitted from publication.]

Benjamin Franklin Paint & Varnish Co., a Division of United Wallpaper, Inc.[1] ***and*** **Emidio J. Palombi, James J. Donahue, and Anthony Galdi, Petitioners *and* Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.**[2] *Case 4–RD–180. May 9, 1958*

DECISION AND ORDER

Upon a petition duly filed, under Section 9 (c) of the National Labor Relations Act, a hearing was held before Max Rotenberg, hearing officer. The hearing officer's rulings made at the hearing 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 [Members Rodgers, Jenkins, and Fanning].

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

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

2. Petitioners, employees of the Employer, assert that the Union is no longer the bargaining representative of certain employees of the Employer as defined in Section 9 (a) of the Act. The Union is currently recognized by the Employer as the exclusive representative of such employees.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) Section 2 (6) and (7) of the Act for the following reasons:

For the past 20 years, the employees involved herein have been covered by collective-bargaining agreements executed by the Employer and the Intervenor. The most recent contract was executed at

[1] The Employer's name appears as corrected at the hearing.

[2] The Board having been notified by the AFL–CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of this Union is hereby amended.

1:30 p. m., on August 28, 1957.[3] The petition was filed at 2 p. m., the same day. The Intervenor and the Employer contend that the contract is a bar to this proceeding. Whether the contract is a bar turns on whether the Petitioners notified the Employer of their intent to file a petition, prior to execution of the contract, but within 10 days of the filing of the petition.[4]

The record reveals that on the morning of August 28, the Employer held a meeting of its employees at which it announced that in view of the withdrawal of the petition in Case No. 4–RC–3354, it had decided to negotiate with the Intervenor and that its representatives would meet with representatives of the Intervenor that morning. At approximately 10:30, that morning, Petitioner Palombi asked Supervisor George Mehaffey for time off. According to Palombi's testimony, he requested time off to go to the National Labor Relations Board to file a petition. Mehaffey told him that he would relay the request to Plant Superintendent Sheridan. Sometime later, Sheridan approached Palombi at his place of work and Palombi asked Sheridan if he could have time off to go to the National Labor Relations Board to file a petition. Mehaffey and Sheridan each denied that Palombi stated that he wanted to go to the Board's offices to file a petition. Mehaffey testified that Palombi requested time off "for personal business." Sheridan testified that Palombi told him that he wanted time off to go to the National Labor Relations Board, but did not indicate in any manner his reason for wanting to go. Sheridan testified further that during his conversation with Palombi, Petitioner Galdi came over and inquired as to the problem, and when Sheridan told him Palombi wanted to go to the Labor Board, Galdi said, "Well suppose it was personal business. Could he have the time off then? You forget all about the Labor Board." Galdi did not testify as to this conversation, but did testify that *he* asked his supervisor for time off for personal business. The Employer has a policy of granting paid time off to employees to attend to personal business. Sheridan granted Palombi the time off and at about 12 noon, Petitioners left the plant to go to the Board's Regional Offices to file the instant petition. At approximately 1 p. m., Sheridan contacted the Employer's personnel manager who was participating in the negotiations with the Intervenor, and notified him that three employees had "requested time off to go to the NLRB." At approximately 2:30 p. m., a telegram sent by Petitioners and informing the Employer of the filing of the petition, was delivered to the Employer's offices.

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[3] The negotiations leading to this contract and its execution followed after the withdrawal of a petition filed by Brotherhood of Painters, Decorators and Paper Hangers of America, AFL–CIO, in Case No 4–RC–3354 During the pendency of that petition, filed July 25, 1957, the Intervenor had continued to claim majority status and to request of the Employer, the negotiation of a new contract

[4] See *General Electric X-Ray Corporation*, 67 NLRB 997; *Michigan Bakeries, Inc.*, 100 NLRB 658, *Associated Food Distributors, Inc*, 109 NLRB 574.

In these circumstances, we conclude that neither Galdi nor Palombi informed the Employer's management representatives that they intended to file a petition. In view of the variance in the different versions as to how Palombi phrased his request for time off and in view of the Employer's policy of granting time off for "personal business," we think it only reasonable to assume that Palombi, like Galdi requested time off for personal business, thus insuring that his request would be granted; and that at most, he requested time off to go to the Labor Board for personal business. This hardly constitutes notice to the Employer of a claim, or intent to file a petition. Accordingly, in the absence of such notice of intent and as the August 28 contract was executed before the Employer had actual notice of the filing of the petition, we find that it constitutes a bar to an election of representatives at this time, and we shall, therefore, dismiss the petition.[5]

[The Board dismissed the petition.]

[5] Cf. *Michigan Bakeries, Inc., supra.*

Dixie Broadcasting Company *and* International Brotherhood of Electrical Workers, AFL–CIO, Petitioner. *Case No. 32–RC–1087. May 9, 1958*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election [1] issued on February 4, 1958, an election by secret ballot was conducted on February 21, 1958, under the direction and supervision of the Regional Director for the Fifteenth Region, among the employees in the unit found appropriate in the above-mentioned Decision. Upon the conclusion of the election, the parties were furnished a tally of ballots which showed that of the approximately 15 eligible voters, 16 cast ballots, of which 12 were for the Petitioner, 3 were against the Petitioner, and 1 was challenged. The challenged ballot is insufficient to affect the results of the election. On February 25, 1958, the Employer filed timely objections to the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation of the Employer's objections and on March 19, 1958, issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the Petitioner be certified as collective-bargaining representative of the employees in the appropriate unit. Thereafter, the Employer filed timely exceptions to the report on objections.

[1] Not published