Janeen Art Studio, Inc., Petitioner *and* Plastic Workers Union, Local 18, I.U.D. & T.W. of U.S. & Canada, AFL–CIO. *Case No. 13–RM–424. March 6, 1959*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.[1]

Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Members Rodgers, Bean, and Fanning].

Upon the entire record, 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 Section 9(c)(1) and Section 2(6) and (7) of the Act.[2]

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

All production and maintenance employees at the Employer's Chicago, Illinois, plant, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[1] The hearing officer refused to admit certain documents offered by the Union on the ground that it was attempting thereby to litigate certain unfair labor practice charges which it had filed. These charges have been investigated by the Regional Director, who has refused to issue a complaint thereon. The documents, however, were essential to the Union's attempt to prove that it had entered into a contract with the Employer which would serve as a bar. We, therefore, overrule the hearing officer's refusal to admit Union Exhibits 1 through 4 into evidence. These documents, contained in the rejected exhibit file, have been considered in our determination of this matter.

[2] The Union contends that it has entered into a bargaining agreement with the Employer which is a bar to this petition. The Employer attacks the validity of any such agreement since it has not been signed by the parties.

On October 27, 1958, the Union requested recognition from the Employer, and on the same day, the Employer gave the Union a written acknowledgement of the Union's majority status, and agreed to negotiate an agreement. The parties did negotiate thereafter, and at the last such meeting, according to the Union, a complete agreement as to terms was reached, and a draft was left with the Employer for signature. The draft agreement, however, had admittedly not been signed by either party as of the date of the Employer's petition herein.

In *Appalachian Shale Products Co.*, 121 NLRB 1160, the Board reaffirmed its position that neither an unsigned agreement nor a signed agreement which does not contain substantial terms and conditions of employment may serve as a bar. It is clear, in the instant case, that neither the unsigned draft agreement, nor the bare letter of recognition can prevent the holding of an election in the stipulated unit. These principles are controlling even when, as in this case, only one union is contending for recognition. The Employer's alleged lack of good faith in doubting the Union's majority and in refusing to sign an agreement relates to the possible commission of unfair labor practices, and is not litigable in a representation proceeding.