

Industrial Rayon Corporation and Gregory J. Cudzilo, Sr., Petitioner and International Union of Operating Engineers, Local 600, AFL-CIO. Case No. 8-RD-190. July 10, 1959

DECISION AND ORDER

Upon a decertification petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Henry G. Gieser, 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 [Chairman Leedom and Members Bean 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. International Union of Operating Engineers, Local 600, AFL-CIO, is the certified and recognized representative¹ of the Employer's employees designated in the petition. The Petitioner, an employee of the Employer, contends that the Union is no longer such representative within the meaning of Section 9(a) of the Act.²

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.

The Employer and the Union contend that the petition should be dismissed for the reason that the Petitioner is, in fact, acting as a "front" for the United Mine Workers of America, District 50, herein referred to as the UMW, a labor organization not in compliance with the filing requirements of the Act. The Petitioner denies that he is fronting. For the reasons hereinafter set forth, we find merit in this contention.

The Petitioner, who was a member of the Union and, at one time, its president, filed the decertification petition on February 10, 1959. He admitted that he had solicited UMW membership, but denied that he did so before he filed the petition. In fact, he maintained that in his discussions with fellow employees prior to filing the petition, he was interested only in how to get rid of the Union, with which he had become dissatisfied, and was not trying to interest them in the UMW. There is evidence, however, that he was soliciting on behalf of the UMW before he filed the petition. For example, Gail Bonnema, another employee of the Employer, testified that the Petitioner asked

¹ The Union's most recent contract with the Employer expired before the petition herein was filed.

² District 50, United Mine Workers of America, intervened at the hearing on the basis of a card-showing.

him to sign a membership card for the UMW sometime between Christmas 1958 and January 1, 1959.

Moreover, Richard C. Johnston, another employee, testified that he attended a meeting at the request of two other employees, who stated that the invitation was extended at the suggestion of the Petitioner, on or about December 30, 1958, which was held at the UMW hall, and was attended by Martin, a UMW representative. Johnston testified without contradiction, that, at this meeting, the Petitioner introduced Martin and stated that Martin would answer questions; that, in answer to questions as to how the UMW could get on a ballot, Martin said that it could be done by filing a decertification petition; and that, in answer to further questions on how to get this action started, the Petitioner answered, "We are just going to have to work harder and get more members."

The Petitioner admitted that there was such a meeting, and that, although he could not recall the date it took place prior to a conference, discussed below, which was held on January 2, 1959. He claimed that he did not know in advance that the meeting was to be held at the UMW hall, but he admitted that he had suggested to Martin that such a meeting be held, and that he had invited some of his fellow workers, including his two supervisors, to attend. He also testified that he had been shopping around for an organization to replace the Union as the representative of the Employer's employees, and that there were meetings with other unions, but he did not name any of these other unions.

On January 2, 1959, the Employer and the Union met to discuss grievances. During their discussion of grievances, the Union charged the Employer with aiding and abetting employees in soliciting for the UMW. The Petitioner was one of the employees specifically identified by the Union with such solicitation. On January 6, 1959, the Petitioner filed an unfair labor practice charge with the Board in which he claimed that he had been suspended by the Employer for soliciting for the UMW, and that this suspension was in violation of Section 8(a) (1) and (3) of the Act.³

James A. Rogers, a business representative of the Union, testified about a telephone conversation with the Petitioner on February 12, 1959, with regard to whether the Petitioner was going to attend a meeting that was being called to discuss problems of the Union. Rogers testified that, in the course of this conversation, the Petitioner stated that he had filed a decertification petition in behalf of the UMW, and that he had stopped soliciting for the UMW. When Rogers so testified, the Petitioner, who was present, blurted out, "That man right there is lying, I never mentioned nothing about

³ This charge (8-CA-1815) was dismissed, but an appeal is pending before the General Counsel.

District 50 over the phone." However, the Petitioner, who testified before Rogers did, admitted in that testimony that he had a conversation with Rogers on February 12, but he could not remember anything that was said. The Petitioner took the stand again, after Rogers had testified and after he had accused Rogers of lying, but no reference was made at this time to the conversation with Rogers.

The Petitioner's difficulty in recalling conversations and events, the contradictions in his testimony, and his apparent evasiveness in answering many of the questions are in sharp contrast with the clear, explicit, and mutually corroborative testimony of the other witnesses about the Petitioner's activity on behalf of the UMW prior to filing the petition. On the basis of the entire record, we are convinced that when the Petitioner filed the instant petition, he was acting in behalf of the UMW, which was barred from seeking an election because of its noncompliance with Section 9(f), (g), and (h) of the Act. We agree, therefore, with the contention of the Employer and the Union that the petition herein should be dismissed.⁴

[The Board dismissed the petition.]

⁴ See *Bay City Division, The Dow Chemical Company*, 116 NLRB 1602; *World Publishing Company*, 109 NLRB 355.

Prime Tanning Co., Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Petitioner.
Case No. 1-RC-5489. July 10, 1959

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election, signed and executed on February 6, 1959, an election by secret ballot was conducted by the Regional Director on March 6, 1959, among the employees in the unit described below. After the election, the parties were furnished with a tally of ballots which showed that of approximately 150 eligible voters, 148 cast ballots, of which 110 were against and 25 were for the Petitioner. Twelve ballots were challenged and one was void. The Petitioner filed timely objections to the conduct affecting the results of the election.

After investigation, the Regional Director on April 29, 1959, issued and served upon the parties his report on objections in which he recommended that all of the objections but one be overruled. Thereafter, the Employer filed a timely exception only with respect to the one objection which was sustained. As no exceptions were filed to the Regional Director's recommendations that the other objections be overruled, we hereby adopt them.