

under all the circumstances of this case, we find that the Employer interfered with the employees' freedom of choice in the selection of a bargaining representative and we shall, therefore, set aside the election and direct that a new election be held.

[The Board set aside the election.]

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

Alton Association of Petroleum Retailers, Inc.¹ and The Congress of Independent Unions, Petitioner. *Case No. 14-RC-3627.*
October 14, 1959

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John W. Noble, Jr., 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
2. The labor organizations involved claim to represent certain employees of the Employer.³
3. A 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.
4. The Petitioner seeks to represent "all employees" of the members of the Association. The Association contends that the appropriate

¹ Herein called the Association.

² The Petitioner and the Association agree that the Association is engaged in commerce. Local 971, Automotive, Petroleum and Allied Trades, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Teamsters, one of the intervenors herein, refused to concede the jurisdiction of the Board. As the record shows that the members of the Association receive goods from outside the State of Illinois valued in excess of \$50,000, annually, and do a gross volume of business in excess of \$500,000 per year, we find that it is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction herein. *Carolina Supplies and Cement Co.*, 122 NLRB 88.

³ At the hearing, Teamsters and District No. 9, International Association of Machinists, AFL-CIO, herein called Machinists, intervened on the basis of alleged contract interests and Machinists urged its contracts as a bar. The Petitioner and Association moved to deny the Machinists' intervention. At the hearing it appeared that the Machinists had no contracts covering any of the employees involved herein and Machinists stated that they did not desire to participate in any election directed herein. In view of the foregoing, we find that there is no contract bar, and we shall not place its name on the ballot in the election directed herein.

unit should include all employees of Association members in good standing, employees of members who are classified as delinquent because of nonpayment of dues, but who have not expressed a desire to withdraw from the Association, and employees of new nonmember applicants for membership in the Association for whom the Association intends to bargain. The Teamsters assert that the unit sought is inappropriate on the grounds that (1) the proposed unit of "all employees" is broader than the existing contract unit which does not include all employees of the employers involved; (2) a multiemployer unit is inappropriate here, because the Association members have signed separate contracts with the Teamsters; and (3) the record does not sufficiently identify the employers whose employees are sought herein. However, in the event that an election is directed in any unit of Association members, the Teamsters expressed a desire to participate in the election.

The Association is composed of retail gasoline dealers located in Alton, Illinois, and vicinity. Since at least 1941, it has bargained with the Teamsters on behalf of its membership, which has fluctuated in numbers from a high of 75 members to a present paid-up membership of about 24 service station operators. The record shows that in the 1958 negotiations between the Teamsters and the Association, the Association represented 32 members in good standing and 8 nonmembers who signed cards authorizing the Association to act for them. At the hearing, the president of the Association stated that there were 24 current members of the Association and there were 7 members for whom it had bargained in 1958, and who had since become delinquent in payment of dues, but who attended Association meetings and for whom the Association intends to act because these members have not indicated a desire to bargain separately or to withdraw from the Association. There are, in addition, three nonmembers of the Association who have applied for membership in the Association, and have expressed a desire to be represented in collective bargaining by it.

The Association bargains with the Teamsters through a committee of three of its members. Upon completion of these negotiations, a contract is prepared and furnished to the service station operators for whom the Association has acted, for signature. The individual operator then signs a separate contract with the Teamsters covering its employees.⁴ The record shows that the employee classifications listed in the 1958 contract have been covered by the parties' contracts since at least 1940.

In view of this bargaining history, we find to be appropriate a multiemployer unit consisting of the 24 Association members in good

⁴ Contrary to the Teamsters' contention, we do not deem the fact that individual dealers have in the past signed separate contracts to preclude our finding that bargaining has been on a multiemployer basis. *Associated Banning Company, et al.*, 110 NLRB 1644.

standing and the 7 members who are delinquent in payment of membership dues for whom the Association has bargained in the past.⁵ As to the three nonmember applicants for Association membership who have expressed a desire to be represented by the Association, the Board has permitted the addition of such employers to the unit in the absence of any objection thereto by any other party.⁶ In the instant case, Teamsters did not specifically oppose the addition to the unit of the employees of the three nonmember employers, but took the more general position that an Associationwide unit was basically inappropriate. However, we have already rejected this contention to the extent of finding that the employees of the employers who have bargained jointly in the past constitute an appropriate bargaining unit, and the record does not disclose what the Teamsters' position would have been with regard to the three nonmember employers had it anticipated that the Board would find a multiemployer unit appropriate. We find therefore, subject to the condition stated below, that a multiemployer unit consisting of employees of all employers listed in Appendix "A" is appropriate, and shall direct an election therein on the assumption that Teamsters does not oppose the inclusion in the unit of the employees of the applicants for Association membership.

However, in the event that Teamsters or any other party does in fact oppose the inclusion of the employees of these three applicants in the multiemployer unit, it may so advise the Regional Director within 10 day from the date of issuance of this Decision and Direction of Election. In such event, the Regional Director is directed to dismiss the petition insofar as it pertains to Wooley's Service Station, Airline Shell Service, and Middletown Shell, on the ground that they are not properly part of the multiemployer unit, and the Regional Director is further directed to proceed with an election in a unit composed of employees of the remaining employers listed in Appendix "A," which unit, in these circumstances, the Board finds appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.⁷

There remains for consideration the classifications of employees to be included in the unit. As previously stated, the Petitioner seeks to represent "all employees" of the employers involved. The Association takes no position but Teamsters contends that the classifications listed in its contracts do not cover all employees. However, the record

⁵ We find no merit in the Teamsters' contention that the Association membership is not set forth with sufficient clarity, as the record identifies by name all of the employers involved herein.

⁶ *Shreveport-Bossier Cleaners & Laundries, Inc.*, 124 NLRB 534; *Molinelli, Santoni & Freytes, S. en C., d/b/a Panaderia La Reguladora and Panaderia La Francesa*, 118 NLRB 1010, 1014.

⁷ *Molinelli, Santoni & Freytes, S. en C., d/b/a Panaderia La Reguladora and Panaderia La Francesa, supra.*

does not disclose that there are any other categories⁸ of employees employed by the employers herein other than those listed in such contracts, and, in any event, the Petitioner indicated at the hearing that the term "all employees" in the petition was intended to encompass only those employees covered by the Teamsters' contracts. Accordingly, subject to the condition stated above with respect to the employees of the three applicants for membership in the Association, we shall direct an election among the following employees of the employers listed in Appendix "A" attached hereto, whom we find to constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.⁹

All attendants, car washers, porters, warehousemen, tiremen, battery men, lubrication men, pickup or roadmen and pumpmen, excluding office clerical employees, guards, and supervisors as defined in the Act.¹⁰

[Text of Direction of Election omitted from publication.]

⁸ Except for those employees represented by Machinists whom no party seeks to include.

⁹ The unit description conforms to the existing contract unit.

¹⁰ The record does not contain any evidence concerning the employee status or the supervisory status of working independent operators or owners, lessee operators, and working foremen, and we shall allow them to vote subject to challenge.

APPENDIX A

Current members

Alton Texaco Service
 Carroll's Shell Service
 Chick's Service Station
 Cliffs Service Station
 2321 Washington, Alton, Ill.
 Cliff's Service Station
 Rogers & Milton Rd., Alton,
 Ill.
 Dugan's Service Station
 George's Standard Service
 Greensbach Service Station
 Hannekn's Standard Service
 Jack's Standard Service
 Jouett's Standard Service
 Station
 Ken's Texaco Service
 Kingston Standard Service
 Lou's Service Station
 Manning's Standard Service
 Ott's Shell Service

Owen's Oil Co.
 Pelhank's Service Station
 Rathgeb's Phillips 66 Station
 Smith's Service Station
 Walker's Shell Service
 Wayne's Standard Service
 Weese & Daniels Service Station
 Jimmy's Standard Service

Delinquent members

Wakeford Standard Service
 Rusty's Service Station
 Henry's Sinclair Service
 Alton Service Station
 Northside Shell Service
 Earl Orman's Standard Service
 Avenue Shell Service

Nonmember applicants

Wooley's Service Station
 Airline Shell Service
 Middletown Shell