

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Glen Cove, Long Island, New York, plant, but excluding office clerical employees, salesmen, professional employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER BEAN took no part in the consideration of the above Decision and Direction of Election.

Greenpoint Sleep Products and Local 601, Industrial Workers Union, Petitioner. *Case No. 22-RC-740. August 9, 1960*

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 Paul M. Hanlon, 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 Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner and Intervenor, Local 601, Upholsterers International Union of North America, AFL-CIO, are labor organizations claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

Petitioner seeks a production and maintenance unit at the Employer's Jersey City, New Jersey, plant. The parties agree as to the appropriateness of such unit. The Intervenor claims, however, that its contract of January 7, 1960, with the Employer is a bar to the petition. The Employer takes no position.

The Intervenor and the Employer executed a contract on August 28, 1957, which contained no automatic renewal provision and which expired by its own terms on August 28, 1959. In December 1959, Petitioner conducted an organization drive, and, after obtaining authorization cards from the employees, approached the Employer for recognition. On December 31, the Employer and Petitioner entered into an agreement reading as follows:

Inasmuch as union local #601 Industrial Workers Union as evidenced by union membership authorization cards represents a majority of the workers employed by Greenpoint Sleep Prod-

ucts it is hereby agreed that due to a former contract with Local 601 Upholsterers In. Union that in order to avoid any jurisdictional disputes that Local #601 Industrial Workers Union will ask for an election before February 21, 1960 and that Greenpoint Sleep Products will recognize whichever of the contending unions will then win said election.

One week later, on January 7, 1960, the Employer and the Intervenor executed an agreement extending the terms and conditions of the 1957 contract from August 29, 1959, to August 28, 1961. The instant petition was filed February 19, 1960.

As the Intervenor's contract was executed January 7, some 6 weeks before the filing of the petition, the contract would be a bar, unless the Petitioner comes within the substantial claim rule enunciated in the *Deluxe* case.¹ In that case, after setting forth new rules for the timely filing of petitions, the Board held that:

. . . this action leaves undisturbed the effect given substantial claims, i.e., where an incumbent union continues to claim representative status, or where a nonincumbent union has refrained from filing a petition to establish its representative status in reliance upon the employer's conduct indicating that recognition had been granted or that a contract would be obtained without an election. If, in these circumstances, the employer nevertheless executes a contract with another union, that contract will continue not to bar an election. Retention of the status given substantial claims is regarded as desirable because such claims arise in situations indicating unsavory practices.

Although it is apparent that the Petitioner, as a nonincumbent union, was neither promised nor led to believe that it could obtain recognition without an election, we, nonetheless, believe that the Employer's conduct fully warrants a finding that the Petitioner had a "substantial claim" within the intentment of the *Deluxe* rule. For it is clear that the Employer by his agreement of December 31 lulled Petitioner into a sense of security leading it to believe that it had a commitment that recognition would not be granted and a contract would not be executed with any union until after the results of a Board election, provided the Petitioner would request such election before February 21, 1960. Then, only 1 week later, the Employer renounced its agreement with Petitioner by executing a contract with the Intervenor, despite its admission that the Petitioner represented a majority of the employees on the basis of a card showing. We find that the substantial claim rule should be applied here, as avoidance of practices such as that engaged in here was the very purpose for

¹ *Deluxe Metal Furniture Company*, 121 NLRB 995, 998-999.

which the substantial claims rule was devised. We therefore deny the Intervenor's motion to dismiss the petition.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within Section 9(b) of the Act:² All production and maintenance employees at the Employer's Jersey City, New Jersey, plant, but excluding office clerical employees, professional employees, guards, and all supervisors within the meaning of the Act.

[Text of Direction of Election omitted from publication.]³

²The unit described is in accordance with the agreement of the parties.

³It appears from the meager record in this case, that the former business agent of the Intervenor organized the Petitioner local and is now the president of the latter. The details are not in the record. The evidence shows that after the formation of Petitioner local, the Intervenor obtained an injunction in the Supreme Court of New York enjoining the Petitioner local *inter alia* from using the numerical designation "601," the same number as the Intervenor local. The Intervenor moved the Board to dismiss the petition on the ground that the use of this number by the Petitioner in the instant proceeding was a violation of the decree.

The Board's customary practice is to permit a union's name to appear on the ballot as specified by it where, in the Board's opinion, the designation will not create confusion in the minds of the voters as to the identity of the participants in the election (*International Harvester Company, East Moline Works*, 108 NLRB 600; *Sonotone Corporation*, 90 NLRB 1236, 1239), and to change the name appearing on the ballot where such confusion may result. (See *Anheuser-Busch, Inc.*, 102 NLRB 800, 802.) Although it does not appear likely that confusion will result in this case, as the Petitioner's name is entirely different from that of the Intervenor, we shall, in deference to the decree of the State supreme court, remove the designation "No. 601" from the name of the Petitioner. In view of our action taken herein, we deny the Intervenor's motion to dismiss the petition on the asserted ground.

St. Regis Paper Company and International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO; Pineland Local 447, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO; Escambia Local 737, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO; Pineland Local 617, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO; United Papermakers & Paperworkers, AFL-CIO; Gulf Local 561, United Papermakers & Paperworkers, AFL-CIO; Local 444, United Papermakers & Paperworkers, AFL-CIO; International Brotherhood of Electrical Workers, AFL-CIO; and Cantonment Local 1937, International Brotherhood of Electrical Workers, AFL-CIO, Joint Petitioners. *Case No. 15-RC-2104. August 9, 1960*

AMENDED DECISION AND ORDER

On March 21, 1960, the Board issued its Decision and Direction of Election¹ in the above-entitled proceeding in which it found wood

¹126 NLRB 1157.

128 NLRB No. 70.