Woodco Corporation *and* Local 522, Lumber Drivers, Warehousemen and Handlers International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 22–RC–909. January 5, 1961*

DECISION AND ORDER

On July 22, 1960, the instant petition was filed under Section 9(c) of the National Labor Relations Act. Prior thereto, on July 20, 1960, the Employer had filed charges against the Petitioner herein, in Case No. 22–CP–9, alleging that it was engaged, since on or about July 19, 1960, in picketing at the Employer's North Bergen, New Jersey, plant, in violation of Section 8(b)(7) of the amended Act. On July 29, 1960, Screens and Fabricated Metals Corp., herein referred to as Fabrico, a wholly owned subsidiary of the Employer, filed charges against the Petitioner in Case No. 22–CP–10, alleging a similar violation with respect to picketing at Fabrico's plant located across the street from the Employer. In these charges it was alleged that the picketing involved all employees of the Employer and Fabrico, respectively. The instant petition requested a unit of all drivers of the Employer. The Regional Director believed that an expedited election proceeding under Section 8(b)(7)(C) was warranted, but as he believed that issues were present which should be decided by the Board, he issued a notice of hearing. Accordingly, a hearing was held before David B. Ellis, hearing officer.

At the hearing, the Employer sought to introduce evidence tending to show (1) that the Petitioner had demanded that it sign a recognition agreement for a unit of all its employees and instituted picketing the next day to compel such recognition, (2) that the picketing had inflicted serious and irreparable injury upon the Employer's business, and (3) that the picketing had already continued for an unreasonable period of time when the instant petition was filed. The hearing officer sustained objections to the introduction of such evidence on the ground that it raised issues which were germane to the pending unfair labor practice charges and not to the representation proceeding, and he rejected the Employer's offers of proof with respect thereto. The Employer in its brief contends that these rulings of the hearing officer were erroneous and that notwithstanding prior precedents of the Board concerning intrusion of unfair labor practice issues in representation proceedings, the Board must resolve the issues raised by its offers of proof in an 8(b)(7)(C) election proceeding.

For the reasons which follow, we agree with the Employer that the matters contained in its offers of proof, insofar as they indicate the group of employees involved in the Petitioner's picketing, are relevant

to a determination of the unit appropriate for an expedited election. The instant case for the first time presents questions concerning the procedures to be followed by the Regional Director on behalf of the Board in the processing of petitions under subsection (C) of 8(b)(7) of the Act. Subsection (C) comes into play where charges of 8(b)(7) violation have been filed and it has been determined by the General Counsel that the subject picketing is for a proscribed object. Subsection (C) and its first proviso limit the proscription to situations

> where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of Section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof.

In our opinion, this statutory scheme contemplates that a violation of this section may be avoided where an expedited election is held in an appropriate unit encompassing the employees for whom the labor organization seeks recognition or whom it seeks to organize by means of the picketing. Thus, the unit for an 8(b)(7)(C) expedited election is not necessarily the unit alleged in the petition because it must as a minimum include the employees who are involved in the picketing. This requires a determination first as to which employees are in fact involved in the picketing, and then a finding as to the smallest unit encompassing such employees which would be appropriate under familiar Board principles. Depending upon the circumstances of the case, the appropriate unit may comprise the categories of employees involved in the picketing or it may be broader in scope.

Our Rules and Regulations and Statements of Procedure generally provide the procedures for implementing the statutory objective of the proviso in question. Section 102.75 of the Rules provides that if it appears to the Regional Director that issuance of a complaint on 8(b)(7) charges may be warranted but for the pendency of a timely petition, the Regional Director shall suspend proceeding on the charges and shall proceed to make an administrative investigation of the petition. Section 102.77 of the Rules provides that the Regional Director, on the basis of his investigation, shall determine whether an expedited election is warranted and, if so, what is the appropriate unit for such election. This section also authorizes a hearing whereby certain issues may be referred to the Board for initial decision.

Although in the instant case the Regional Director ordered a hearing, it does not appear that prior thereto he made an investigation as

to which employees of the Employer are involved in the picketing, a necessary predicate for a determination of the appropriate unit for an expedited election. We shall therefore remand the case to the Regional Director to enable him to determine in the first instance the appropriate unit for an expedited election, upon the basis of an investigation of all the facts, including the matters alleged in the Employer's above-mentioned offers of proof.

[The Board remanded the instant petition to the Twenty-second Region to determine the appropriate unit and to further process the case.]

MEMBERS FANNING and KIMBALL, dissenting:

Contrary to our colleagues we could treat this petition—or any petition under Section 8(b)(7)(C) which seeks a unit inconsistent with the picketing of the Petitioner—as an ordinary 9(c) petition and process it in the usual way. The Board in its Rules, Series 8, Section 102.80(b), has empowered the Regional Director to make just such determination and immediately to proceed with the 8(b)(7) complaint. The picketing is then enjoinable without further delay. The practical result of this processing—already especially provided in the Rules to implement 8(b)(7)(C)—would be to encourage picketing unions, who file petitions under 8(b)(7)(C) in order to prolong their organizational picketing, to tailor their picketing to the unit they intend to petition for if voluntary recognition is not achieved.

Here the petition seeks a unit limited to truckdrivers, but it appears that the picketing, particularly in the light of events preceding it, was actually for an all-employee unit. Our colleagues would have the Regional Director conduct an election in the much broader unit, although there is no petition on file for that unit, and no postpetition indication by the Petitioner that it seeks to represent the larger unit. The result may be an unfair penalty on the employees who, unless they vote for Petitioner who does not now claim to represent them, will be deprived for a year of the opportunity to select a bargaining agent by Board election. (See Member Fanning's opinion in *Humko*, 123 NLRB 310, 313.) In effect our colleagues say that an 8(b)(7)(C) petition necessitates an expedited election and that the unit must include as a minimum all employees involved in the picketing. We believe that their interpretation of that section is basically unfair to the rights of employees and will tend to create uncertainty in that highly important body of Board law concerning appropriate units for collective bargaining.

Clearly the challenge of the new legislation expediting certain elections can be met effectively by processing on an expedited basis those petitions which are consistent with the picketing, and by processing in the usual 9(c) manner those petitions which are inconsistent with the

picketing. Evidence as to inconsistency should be put before the Regional Director as outlined in Section 102.77 of the Rules. We do not see the necessity or wisdom of what amounts to a separate unit standard for expedited elections.

Jamel, Inc. *and* International Ladies Garment Workers Union, AFL–CIO. *Case No. 11–CA–1599. January 6, 1961*

DECISION AND ORDER

On June 30, 1960, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief.[1]

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 Jenkins and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and, except as set forth hereinafter, hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

As found by the Trial Examiner, Tant was one of six employees who attended a union meeting on February 2, which meeting was kept under surveillance by Respondent; was one of three employees who Respondent knew had signed cards at that meeting; and was, as Respondent knew from Gilliam's interrogation, an active union adherent. On Monday, February 8, Tant and Robbins voluntarily accepted a layoff. Tant's testimony was that she agreed to a layoff only for the balance of the week while Supervisor Gilliam, corroborated by Robbins, testified that Tant requested that she be the last one called back to work. On February 10, the Union filed a charge, which was served on Respondent on February 13, alleging, *inter alia*, that Respondent had discriminated against Tant on February 8. On February 15 Robbins was recalled to work, but Tant was not recalled, either then or at any other time prior to the hearing. In late March Supervisor McMillin told Tuck that Respondent had laid off some of its best hands because of the Union.

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[1] The Respondent's request for oral argument is denied as the record, including the briefs, adequately presents the issues and the positions of the parties.