

assistant department managers, office managers, head cashiers and assistant head cashiers, persons in charge of soft line and hard line receiving and marking, professional employees, guards, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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**Abbott Laboratories and Pembroke Gochnauer, Esq., Petitioner and Warehouse Union Local 860, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ind.).** *Case No. 20-RD-250. May 16, 1961*

### 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 M. C. Dempster, hearing officer.<sup>1</sup> 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 McCulloch and Members Rodgers 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. The labor organization involved claims to represent employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.<sup>2</sup>

The Petitioner seeks to decertify a unit of warehouse employees of the Employer at its San Francisco, California, plant. It is the position of the Employer that the single-employer unit described in the petition is the only appropriate unit for the purpose of a decertification election. The Union contends that a unit so limited is inappro-

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<sup>1</sup> The Petitioner asserts that Warehouse Union Local 860, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ind.), the currently recognized bargaining representative of the employees involved herein, is no longer their representative as defined in Section 9(a) of the Act.

<sup>2</sup> The Union moved to dismiss the petition on the ground that the identity of the "petitioning party" was not disclosed. The petition herein, which was filed by an attorney, was administratively investigated by the Regional Director before proceeding to hearing. The Union makes no allegation of fronting by the Petitioner, nor does it question the validity of the showing of interest. Section 9(c) (1) (A) permits the filing of a decertification petition, *inter alia*, by "any individual," which includes an attorney. See *Alexander Manufacturing Company*, 120 NLRB 1056. It is not necessary that the petition be filed by any sponsoring employee or committee of employees. It is sufficient that the Petitioner is acting on behalf of a substantial number of employees whose interest in decertification has been administratively demonstrated. The motion to dismiss is denied.

priate because the Employer has been included in a long bargaining history on a multiemployer basis.

The record shows that for at least 15 years prior to 1957, the Employer was represented in bargaining negotiations by the San Francisco Employers Council, herein called the Council, in a multiemployer relationship between some 180 employers in the San Francisco area and the Union. After 1953, the Employer, among others, separately negotiated certain fringe benefit arrangements for its own employees. With the exception of these variations, from 1954 to 1957 the contracts executed with the Employer were identical with the master contract for the multiemployer group. On March 12, 1957, the Employer notified the Council that it intended thereafter to conduct its own bargaining and canceled the Council's power of attorney. On March 18, 1957, the Council returned to the Employer the power of attorney and wrote that it would inform the Union of the Employer's withdrawal.

Thereafter, the Employer retained Samuel N. Beard, Jr., to represent it in labor relations matters. Beard has resigned as a staff negotiator for the Council on November 1, 1956, and set up the Peninsular Employers Council (P.E.C.) and a private consulting firm called Beard & Associates. It appears that those employers in the P.E.C. were intended to be represented on a group basis and those on retainer with Beard & Associates on a separate employer basis. The Employer went on retainer with Beard & Associates. Sometime in June or July 1957, the Union was advised by the Council that it no longer represented the Employer and that letters pertaining to contract negotiations should be referred to Beard.

Beard actively participated, together with the Council, in the 1958 negotiations with the Union for a multi-employer contract. Beard did not negotiate on behalf of the Employer, but was representing the firms organized by another union, Warehouse Union Local 655. Following execution of the 1958 multiemployer contract, the Employer signed an individual contract with the Union along the lines of the multiemployer contract but with separately negotiated variations.<sup>3</sup> In 1960, negotiations were conducted and consummated by the multi-employer group pursuant to a wage reopener clause in the contract. Thereafter, in separate dealings with the Union, the Employer entered into a contract supplement in connection with the wage reopener. The Employer's 1958 contract and the 1960 supplement indicate no relation to the multiemployer agreement and reflect only the terms of a separate employer contract. In this proceeding, the Employer explicitly indicates its intention to pursue an independent and separate course in collective bargaining.

<sup>3</sup> For example, the Employer's contract did not follow the multiemployer contract with respect to health, welfare, and pension provisions, and did not adopt the method of calculating prorata vacation time.

We find no merit in the Union's contention that it was not properly notified of the Employer's withdrawal from the multiemployer bargaining in 1957, and that it had reason to believe that the Employer continued to participate, through Beard, in the multiemployer bargaining until this proceeding. The record indicates that the Union had actual notice, or at least sufficient information reasonably to conclude that the Employer had withdrawn from multiemployer bargaining. In the 1958 and 1960 group negotiations, while the Union may have been confused<sup>4</sup> at the time as to which employers were covered, it was never informed, directly or otherwise, that the Employer was a participant. The fact of the separate negotiations with the Employer in those years and the nature of the agreements reached are indicative of an independent course by the Employer. There is no basis for a finding that Beard has apparent authority to represent the Employer as part of a multiemployer unit.

On the entire record in this case, we are satisfied, and find, that the Employer had clearly withdrawn from its past participation in the multiemployer bargaining and has unequivocally evinced its intention to pursue an independent, separate employer course in collective-bargaining relations.<sup>5</sup>

Accordingly, we find that the following employees of the Employer at its San Francisco, California, branch, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All warehouse employees, excluding office clerical employees, sales personnel, guards, and supervisors<sup>6</sup> as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>4</sup>The union representative testified, for example: "Presumably which hat Sam Beard had on at the moment and which he wore subsequent to that, I have no way of knowing. . . ."

<sup>5</sup>See, e.g., *W. A. Swanson Logging Co.*, 111 NLRB 495.

<sup>6</sup>The parties stipulated at the hearing that the working foreman is not a supervisor and should be included in the unit.

**Gus Canales, Inc. and Building and Construction Trades Council of Corpus Christi, Texas, and Vicinity, AFL-CIO**

**Hudson Engineering Corporation and Building and Construction Trades Council of Corpus Christi, Texas, and Vicinity, AFL-CIO. Cases Nos. 23-CA-951 and 23-CA-956. May 17, 1961**

#### DECISION AND ORDER

On September 16, 1960, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding, finding that 131 NLRB No. 83.