

As to other issues which were not specifically ruled upon in the Decision, the Board was convinced that the Trial Examiner's findings and conclusions, which it expressly adopted, were correct. Moreover, the courts have held that the requirements of due process do not compel the Board to rule specifically on each exception of the parties to the Intermediate Report.<sup>8</sup> Accordingly, we find no merit in the contentions presented in the motion for reconsideration of the Petitioner and Charging Parties, and we shall, therefore, reaffirm our Decision, Order, and Certification of Results of Election herein.

CHAIRMAN McCULLOCH and MEMBER BROWN took no part in the consideration of the above Supplemental Decision and Order Denying Motion.

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<sup>8</sup> See *NLRB v. Wichita Television Corporation, Inc. d/b/a KARD-TV*, 277 F. 2d 579, 585 (C.A. 10); *Pittsburgh S.S. Company v. N.L.R.B.*, 167 F. 2d 126, 128 (C.A. 6).

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**Normandin Bros. Company, Petitioner and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.**  
*Case No. 21-RM-650. June 20, 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 Roger B. Holmes, 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 labor organization involved claims to represent certain employees of the Employer.
3. The Employer seeks an election in a unit of its production and maintenance employees. The Union, the certified bargaining representative of such unit, moved that the petition be dismissed allegedly because it had disclaimed any interest in continuing to represent the employees who are the subject of the petition.

On June 17, 1959, the Union was certified as the bargaining representative of the Employer's production and maintenance employees. Thereafter, it engaged in bargaining with the Employer, but no agreement was reached. On February 17, 1960, the Union struck the Employer's plant and picketed with signs announcing that the employees were on strike. On June 21, 1960, the Employer filed the present petition. Two days later, the Union filed a charge alleging the Employer had violated Section 8(a) (5) and (1) of the Act. The charge

was dismissed by the Regional Director on July 22, 1960.<sup>1</sup> Thereupon the Union, by mail, notified the Employer that it no longer was seeking a contract or recognition. It added, however, that it intended to continue "informational" picketing for the "legal" purposes of informing the public that the Employer did not maintain union standards, did not employ union members, and did not have a union contract. Consequently, on July 25, it changed the language on its picket signs from "On Strike" to:

To the Public! Normandin Bros. Company Employees do not work under Union Conditions. The Company does not have a contract with L.A. Joint Board A.C.W.A., AFL-CIO.

However, since that time and until at least the date of the hearing, the Union picketed only at the employee-service entrance to the plant, not at the customer entrance.

We disagree with the Union that its picketing after July 25, 1960, was informational in purpose only.<sup>2</sup> Though the picket signs by their language were addressed to the public, it is clear that the picketing itself was not so directed. As indicated above, the Union limited its picketing to the service-employee back entrance of the plant on a side street and left unpatrolled the public or customer entrance located on a main thoroughfare. The actions of the Union cannot be reconciled with the alleged purpose of the picketing. Rather these actions indicate a continuation of the Union's interest in representing the employees as well as a demand for a contract—a demand previously pressed through its "on-strike" picketing and the filing of its refusal-to-bargain charge against the Employer. Therefore, we conclude and find that the Union's picketing is tantamount to a present demand for recognition and is inconsistent with its disclaimer.<sup>3</sup> Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:<sup>4</sup> All production and maintenance employees at the Employer's Los Angeles, California, plant, including machinists, shipping and receiving employees, stock clerks, and plant clerical employees, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>1</sup> The Union did not appeal from the Regional Director's dismissal of its charge

<sup>2</sup> The Union refers in this connection to that part of Section 8(b)(7)(C) which relates to publicity picketing. However, in view of our finding hereinafter, we find no merit in the Union's argument based on this section of the Act

<sup>3</sup> See, for example, *Witwer Grocer Company (Cedar Rapids Warehouse and I.O.A. Foods Division)*, 111 NLRB 936.

<sup>4</sup> The unit conforms to that previously certified by the Board.

MEMBER FANNING, concurring in part and dissenting in part:

For the reasons set forth in my opinion in *Humko, A Division of National Dairy Products Corporation*, 123 NLRB 310, at 312, I would find that no question concerning representation exists here, that the petition be dismissed, that a formal ruling should issue that the Union is not the majority representative of the employees in the unit, that the certification is revoked, and that the Union may not have a petition entertained as to these employees for a period of 12 months except under the circumstances provided for in Section 8(b)(7)(C) of the Act and Sections 102.75-102.80 of the Board's Rules and Regulations, Series 8.

I agree with the majority that the disclaimer was equivocal. However, the Union has admitted that it has no majority, and there is no true question concerning representation. Under these circumstances the holding of an election is not only an exercise in futility, but it also deprives the employees of their opportunity of choosing any other union in a Board-conducted election for a period of 12 months.

By a decision such as I have outlined above, the Board may accomplish all that it can by an election but at the same time avoid penalizing the employees for 12 months by preserving their rights to select any other labor organization during that period.

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

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**Huntley Industrial Minerals, Inc. and General Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 982, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Construction, Production, General Labor Local Union No. 302, AFL-CIO, Petitioners.**  
*Case No. 20-RC-4494. June 20, 1961*

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, hearings were held before Joseph L. Meagher, 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 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.