

going on and all parties to the existing relationship acquiesced in the withdrawal. Obviously my views are limited to the facts here involved and I do not express an opinion as to appropriate times for withdrawals generally. I believe that it is equally obvious that granting the employees of Foote & Davies a self-determination election as to whether *they* wish to return to a multiemployer unit from which their employer has withdrawn would run contrary to the concept that their employer can effect a withdrawal and has done so.

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

Hallenberger, Inc. and Chauffeurs, Teamsters and Helpers Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.¹ Case No. 25-RM-118. July 25, 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 John W. Hines, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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 Leedom].

Upon the entire record in this case, the Board finds:

1. The Employer, an Indiana corporation having a place of business in Evansville, Indiana, is engaged in selling and servicing trailer and tractor equipment at wholesale and retail. During the year ending April 1, 1961, its sales were valued at more than \$500,000, of which in excess of \$250,000 represented sales to customers located outside the State of Indiana. During the same period, its purchases from sources outside the State were valued at more than \$300,000.

We find, contrary to the Union's contention, that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.³

¹ The name of the Union appears as amended at the hearing

² At the hearing the Union moved to strike from the record the testimony of the Employer's president because of its allegedly incredible nature and the witness' allegedly evasive attitude. The hearing officer denied the motion. See Sec. 102.66(d)(3), National Labor Relations Board Rules and Regulations, Series 8 (1959). The Union has renewed the motion before the Board. We find no error in the hearing officer's ruling. Accordingly, it is hereby affirmed.

³ The Union has moved to dismiss the petition because of the alleged lack of valid evidence to prove jurisdiction. The above findings as to jurisdiction are based on the

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Union moved to dismiss the petition upon the ground that the Employer had agreed not to file a representation petition at least until October 3, 1961.

On October 3, 1960, the Employer and the Union entered into an agreement for the settlement of the dispute between them. As part of the settlement, the Employer agreed not to "file a Decertification Petition trying to oust the union as the bargaining agent, within the next twelve (12) months," and the Union promised that it would call off its strike. About 2 weeks after the agreement was signed the Union resumed picketing the Employer's place of business; the Employer filed the present petition on February 9, 1961. There is disagreement between the parties as to who was responsible for the alleged breach of the settlement agreement. According to the Union, picketing was resumed because the Employer failed to live up to certain provisions of the agreement. According to the Employer, at the request of the Union the parties agreed to rescind their October 3 settlement so as to permit the Union to resume its picketing. It thus appears that within 2 weeks of its execution the October 3 settlement agreement ceased to be effective. Under the foregoing circumstances, and without deciding what effect would be given to such contract if still subsisting, we find that the October 3 contract is not a bar to the present petition.⁴

Accordingly, 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 parties agree, and we find, that the following employees of the Employer at its Evansville, Indiana, facility constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All servicemen, mechanics, helpers, parts men, and truckdrivers, excluding office clerical employees, salesmen, professional employees, guards, and supervisors⁵ as defined in the Act.

testimony of the Employer's president. No evidence was introduced to controvert this testimony. Moreover, the Union has filed a number of unfair labor practice charges against the Employer, one of which filed on May 2, 1960, resulted in the issuance of a complaint against the Employer. In April 1960, the Union also filed a representation petition with the Board seeking to represent employees of the Employer. The charges, the complaint, and the representation petition evidence the Union's understanding and contention that the Employer is engaged in commerce within the meaning of the Act. Accordingly, we find no merit in the Union's motion and it is hereby denied.

⁴On February 13, 1961, the Union filed unfair labor practice charges against the Employer alleging that by violating the October 3 agreement including filing of a "decertification petition" within 12 months of October 3, 1960, the Employer had committed unfair labor practices. On March 30, 1961, the Regional Director dismissed the charges. His dismissal was upheld by the General Counsel on appeal.

⁵The parties stipulated that Ray Hallenberger, president and general manager, and John Fuchs, assistant to the president and general manager, are supervisors and should be excluded from the unit.

The Union contends that James Nelson, Edwin Herrenbruck, and Thomas Sharkey should be excluded from the unit as supervisors, and Fred Grimm as a salesman; the Employer asserts that all four should be included.

Nelson and Herrenbruck were foremen before the strike which began in May 1960. Since the strike Nelson has been working as a machinist and Herrenbruck as a welder. Neither is now exercising supervisory authority. It is not clear from the record whether Nelson and Herrenbruck are merely temporarily assigned to nonsupervisory duties because of a decline in business resulting from the strike, or whether their assignment to their present duties is more or less permanent.⁶ In these circumstances, we shall make no determination at this time as to whether they are included in the unit but shall permit them to vote subject to challenge.

Thomas Sharkey is a parts man in the shop and also drives a truck picking up and delivering merchandise. He receives considerably more per hour than the other parts man, but there is no evidence that he has ever acted as a supervisor. We find that he is not a supervisor and include him.

Fred Grimm was a salesman when the strike started, but is now working as an automatic welding machine operator. According to the Employer, his sales record during the 4 months preceding the strike was so poor he would have been eliminated as a salesman even if no strike had occurred. As his assignment to the shop appears to be permanent, we include him in the unit.

[Text of Direction of Election omitted from publication.]

⁶ See *United States Rubber Company*, 86 NLRB 338, 340.

**Threads, Incorporated and Textile Workers Union of America,
AFL-CIO.** *Case No. 11-CA-1651. July 26, 1961*

DECISION AND ORDER

On February 15, 1961, Trial Examiner William Seagle 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, the Respondent filed exceptions to the Intermediate Report.

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-

132 NLRB No. 30.