

In the circumstances of this case, we find no merit in the Employer's further contention that since the driver-salesmen are represented on a multiemployer basis, the unit petitioned for must also be multi-employer in scope. The all-employee unit, excluding the driver-salesmen,⁶ in which the election will be directed is, in our opinion, self-sufficient and internally homogeneous.

Accordingly, we find that the following employees at the Employer's Norfolk, Virginia, and Portsmouth, Virginia, operations constitute an appropriate unit for the purposes of collective bargaining within the meaning of the Act:⁷

All truckdrivers, warehousemen, shipping clerks, and helpers, but excluding all office clerical employees, guards, watchmen, and supervisors as defined in the Act.⁸

[Text of Direction of Election omitted from publication.]

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

⁶ Cf. *Valley of Virginia Cooperative Milk Producers Association*, 127 NLRB 785. In the instant case, the driver-salesmen are already represented separately under contract which is tantamount to an agreement to exclude.

⁷ The record indicated that the Employer has no classification of forklift operators requested by the Petitioner and that the forklift operations are performed by warehousemen. The classification of forklift operator is therefore not included in the unit.

⁸ As the unit found appropriate is larger than that specifically requested by Petitioner, which has an adequate showing of interest in such unit, the Petitioner may withdraw from the election upon timely notice to the Regional Director.

Andes Candies, Inc., Petitioner and Grocery and Food Products, Food Processors, Food Canners, Frozen Food Plant, Warehouse and Related Office Employees Union, Local 738, I.B.T.¹
Case No. 13-RM-565. October 4, 1961

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Gordon J. Myatt, 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 Board² finds:

1. The Employer is engaged in commerce within the meaning of the Act.

¹ The Union's name appears as amended at the hearing.

² Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in this case to a three-member panel [Chairman McCulloch and Members Fanning and Brown].

2. Grocery and Food Products, Food Processors, Food Canners, Frozen Food Plant, Warehouse and Related Office Employees Union, Local 738, I.B.T., is a labor organization within the meaning of the Act.

3. No 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, for the following reasons:

The Employer filed a petition on March 28, 1961, alleging that the Union had presented it with a claim for recognition as the representative of its production and maintenance employees.

The Employer operates one manufacturing plant and a number of retail candy stores situated within a 10-mile area in Chicago, Illinois. The instant proceeding only concerns the production and maintenance employees at the Employer's candy plant. These employees have never been represented in the past. The retail stores sales employees, on the other hand, are currently represented by another labor organization not involved herein.

The Union commenced its organizational campaign at the candy plant in November 1960. From that time until the hearing in May 1961, two union organizers were present at the plant's entrance three or four times weekly, distributing union literature and attempting to get the workers to sign authorization cards.

The Union picketed some of the Employer's retail candy stores for short periods of time prior to Christmas, St. Valentine's Day, Easter, and Mother's Day.³ No picketing took place at the candy plant itself. The picket signs contained the following language:

**THIS EMPLOYER DOES NOT HAVE A CONTRACT
WITH LOCAL 738, I.B.T., SUCH AS DUTCH MILL
CANDIES**

**ANDES CANDIES DOES NOT HAVE A CONTRACT
WITH LOCAL 738, I.B.T., COVERING THE CHICAGO
AREA CANDY PRODUCTION WORKERS**

In addition, picket signs containing the following legend were displayed for the first time prior to St. Valentine's Day.

**PLEASE PATRONIZE EMPLOYERS HAVING A CON-
TRACT WITH LOCAL 738, I.B.T.**

There is no evidence in the record to show that the pickets conversed either with the store employees or representatives of management.

³ The record indicates that the Union picketed at two of the Employer's stores prior to Christmas and at six of the stores during the other holidays mentioned.

The Employer's attorney, Willis Ryza, testified that he arranged a luncheon conference⁴ with the union organizers in late February 1961, and that the organizers indicated at the conference that "a contract could be reached." This testimony, however, was contradicted by union organizers Michael Fomusa and Walter Domanchuk. They denied making a promise to cease picketing if a contract was signed and contended that the Union's position was clearly reflected in the December 12, 1960, letter to the Employer, in which the Union informed the Employer that it did not claim to represent a majority of the plant's employees, that it did not seek recognition as the bargaining agent of the employees, that it did not desire a contract on their behalf, and that it was picketing merely to persuade "the consuming public to transfer their business to those employers with whom it had a contract" in support of its efforts to organize the Employer's production employees.

On the basis of the foregoing evidence, we cannot conclude that the Employer had ever been presented with a claim to recognize the Union which would support its petition for an election herein.

Moreover, shortly after the filing of this petition, the Union once again wrote the Employer and denied any claim to represent the employees in question. This denial was reasserted by the Union at the hearing on the petition. We find nothing in the Union's picketing of the Employer's stores which is inconsistent with its denial of any claim to representation.⁵

In these circumstances, we find that no question concerning representation of the Employer's employees exists at this time and we shall accordingly dismiss the petition.

[The Board dismissed the petition.]

⁴ This was the only instance during the entire 7-month union organizational campaign that representatives of the Employer and Union conferred.

⁵ *Miratti's Inc.*, 132 NLRB 699.

Hanes Hosiery Mills Company and American Federation of Hosiery Workers, AFL-CIO, Petitioner. *Case No. 11-RC-1491.*
October 4, 1961

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Jerry B. Stone, 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 Leedom and Brown].