

Modern Litho Plate Corp., Petitioner and Amalgamated Lithographers of America, Ind., Local No. 1. Case No. 2-RM-1126.
November 7, 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 William G. Haemmel, 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 the case, the Board¹ finds:

1. The Employer is engaged in commerce within the meaning of the Act.²
2. The labor organization involved claims to represent certain employees of the Employer.
3. 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.

The Union contends that a consent election conducted by the New York State Labor Relations Board on January 25, 1961, in the agreed unit bars a National Labor Relations Board election for 1 year.

The record shows that the consent election was won by the Union, the vote being 8 to 3. There were two challenges. The Employer objected to the election thereafter, on the grounds that the State board lacked jurisdiction due to the preemptive right of the National Labor Relations Board. However, before determination was made on this objection the New York State board permitted the Union to withdraw its petition.³

It is the Board's policy to honor a State-conducted election where the election itself is valid under State law and not affected by any irregularities under our standards.⁴ However, we find in the circum-

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 [Members Leedom, Fanning, and Brown].

² The Employer is engaged in the manufacture of lithographic plates in New York City. Its total gross revenue during 1960 was in excess of \$175,000 from sales to firms located within the State of New York. However, it was stipulated that the Employer's largest customer, Kenner Printing Company, had a gross annual revenue in excess of \$50,000 from out-of-State customers during the same period. Accordingly, the Board will assert jurisdiction on the basis of the indirect annual outflow in excess of \$50,000 *Siemens Mailing Service*, 122 NLRB 81.

³ The Union, in requesting withdrawal of its petition, likewise conceded to the State board that the Employer did meet the jurisdiction standards of the National Labor Relations Board, and furthermore "if the Petitioner [Union] were certified by the State Board and if the Employer committed some unfair labor practices the Petitioner [Union] would very likely file charges with the National Board rather than with the State Board since the Employer so strongly contends that the State Board had no jurisdiction over it."

⁴ *Olin Mathieson Chemical Corporation, Calaboma Plant, at McIntosh, Alabama*, 115 NLRB 1501.

stances of this case that a final determination by the State board of the validity of the election has been deliberately avoided by the withdrawal of the petition. We therefore cannot consider the election valid. Accordingly, we find no merit in the Union's contention.

4. The appropriate unit:

We find, in accord with the agreement of the parties, that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

All lithographic production employees, excluding all other employees, professional employees, guards, watchmen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Western Cartridge Company¹ and District 9, International Association of Machinists (AFL-CIO). *Case No. R-4688.*
November 7, 1961

DECISION CLARIFYING CERTIFICATION

Pursuant to a Board certification on February 6, 1943, the American Federation of Labor and Affiliated Organizations, was certified as bargaining representative of a unit of all production and maintenance employees of the Western Cartridge Company, East Alton, Illinois, including working foremen who spend less than 50 percent of their time in performing supervisory functions, and production and maintenance clerical employees, but excluding superintendents, general foremen, working foremen who spend a majority of their time performing supervisory functions, and all supervisory employees of higher rank, guards, office employees, timekeepers, stenographers and typists on the factory payroll, technical employees, and firefighters.²

Effective August 28, 1946, District 9, International Association of Machinists (AFL-CIO), hereinafter referred to as I.A.M., succeeded and was substituted for the American Federation of Labor and Affiliated Organizations as the labor organization representing employees covered by the certification, including all production employees in the detonator department of the Employer now known as department 1360-detonator. Thereafter and continuously to the present time, the parties have entered into collective-bargaining agreements.

On June 13, 1941, in Case No. R-2494, the Chemical Workers

¹ Olin Mathieson Chemical Corporation is the successor to Western Cartridge Company.

² 46 NLRB 948.