

2. Local 853, International Union of Operating Engineers, AFL-CIO, and its Business Manager Richard J. Carney, Jr., are not and have not been lawfully entitled to force or require Schiavone & Sons, Inc., and Schiavone Terminals, Inc., to assign the work of operating such gantry cranes to employees who are currently represented by Local 853, International Union of Operating Engineers, AFL-CIO.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 853, International Union of Operating Engineers, AFL-CIO, and its Business Manager Richard J. Carney, Jr., shall notify the Regional Director for the First Region, in writing, whether or not they will refrain from forcing or requiring Schiavone & Sons, Inc., and Schiavone Terminals, Inc., by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to employees in the unit represented by Local 853, rather than to crane operators in the unit represented by the ILA.

Leonard Wholesale Meats, Inc. and Fred Keith, employee, Petitioner and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 576, AFL-CIO. *Case No. 17-RD-214. April 11, 1962*

DECISION ON REVIEW

On January 10, 1962, the Regional Director for the Seventeenth Region issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the Union, in accordance with Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, filed with the Board a timely request for review of such Decision and Direction of Election, on the ground "That there are compelling reasons for reconsideration of an important Board rule or policy, where as a matter of policy, the Board can determine that a decertification petition is filed timely by placing an arbitrary number of days during which the decertification petition can be filed."

The Board, by telegraphic order dated February 7, 1962, granted the request for review and stayed the scheduled election. Thereafter, the Union filed a brief in support of its contention and urged that the petition in this case be dismissed.

The Board has considered the entire record in the case with respect to the Regional Director's determination under review together with the Union's brief. The Board hereby affirms the Regional Director's decision that "The petition is timely since it was not filed more than 150 days before the terminal date of an outstanding contract nor

during the 60-day period immediately preceding and including said expiration date." *Deluxe Metal Furniture Company*, 121 NLRB 995, 999, 1000.

In its brief, the Union asserts that since the 150-day period for the filing of a petition was established in the *Deluxe* case, *supra*, conditions have changed and that as a result of the delegation by the Board to its Regional Directors of its powers under Section 9 of the Act, on May 15, 1961, the reasons for allowing a petition to be filed as long as 150 days before the termination date of an existing contract are no longer valid. The Union suggests that this period be shortened.

Since the delegation to the Regional Directors, the Board has been making a continuing study of the length of time between the filing of a petition and the holding of an election. Our experience indicates that the delegation has worked out satisfactorily and that the length of time has diminished considerably. Consequently, under the present rule, when petitions are filed early in the open 150—60-day period, a valid, existing bargaining relationship may be unduly disturbed by a change in representatives through a Board election conducted well in advance of the terminal date of such existing contract. To avoid such consequences of the Board's own expedited procedures and further promote the stability of collective-bargaining agreements, without thereby lessening employees' freedom of choice, we shall reduce the open period for the filing of representation petitions during the term of an existing bargaining contract. However, in modifying the rule established in the *Deluxe* case that a petition filed more than 150 days before the termination of a subsisting contract will be regarded as premature, we believe that such a change should be applied prospectively rather than to the instant petition or other petitions which already have been filed. Otherwise there could be detriment to parties who have acted in good faith in reliance upon the Board's clear, present rules concerning timeliness.

We will, therefore consider that petitions filed on or after May 1, 1962, are premature, if they are filed more than 90 days before the terminal date of subsisting contracts. This change does not in any way modify the length of the insulated period established in the *Deluxe* case which shall remain 60 days.

Inasmuch as we have decided not to make the foregoing change retroactive, the Regional Director properly concluded that the petition in this case was timely filed. Accordingly, the case is hereby remanded to the Regional Director for the Seventeenth Region for the purpose of holding an election pursuant to his Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the date of this Decision.