

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

S. E. NICHOLS COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

NICHOLS DISCOUNT CITY,
Employer.

Dated _____ By _____
(Representative) (Title)

BUTLERS' SHOE CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

THE RICHARDS CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

BARBARA LYNN STORES, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

P.H.S. OF ELMIRA,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Fourth Floor, The 120 Building, 120 Delaware Avenue, Buffalo, New York, Telephone No. 842-3112.

American Bridge Division, United States Steel Corporation and S. L. Parker, Petitioner and United Steelworkers of America, AFL-CIO. Case No. 20-RD-428. February 2, 1966

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Patricia J. Kenny. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Employer, the Petitioner, Carpenters' Union Local 1418, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and the United Steelworkers of America, AFL-CIO, filed briefs in support of their positions.¹

¹ The request of United Steelworkers of America, AFL-CIO, herein called Steelworkers Union, for oral argument is hereby denied because the record and briefs adequately present the issues and positions of the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

Upon the entire record in this case, including the briefs of the parties, the Board finds:

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

2. The labor organizations involved claim to represent certain employees of the Employer.²

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act for the following reasons:

The Petitioner seeks a decertification election in a unit of all production and maintenance employees of the Employer at the Employer's Lockeford, California, plant. The Employer and the Steelworkers Union contend that the petition should be dismissed on the grounds that it was untimely filed during the certification year and that the Petitioner seeks an election in an inappropriate unit. In addition, the Employer contends that the petition is untimely because the Board is prohibited from conducting an election at this time by Section 9(c) (3) of the Act. As we find merit in the contention based on Section 9(c) (3), we find it unnecessary to reach the issues raised by the other contentions of the parties.

The Employer operates steel fabricating plants and sales offices throughout the United States. This proceeding involves its plant at Lockeford, California. On or about March 1, 1965 (all dates herein are in 1965 unless stated otherwise), the Employer began its operations there and on March 9 the Steelworkers Union filed a petition seeking certification as exclusive bargaining representative of the production and maintenance employees at the Lockeford plant (Case No. 20-RC-6296). At the time of the hearing in Case No. 20-RC-6296, held on March 26, the Employer employed 18 or 19 employees at the plant in about the same number of job classifications. At that hearing, the Employer testified that it expected to employ a maximum of 50 to 60 employees around June or July; that the workload and the size of the work force at the Lockeford plant would vary greatly in the future; and that it was possible but unlikely that employment there would ever exceed 100 employees in about 25 job classifications. The Regional

² Steelworkers Union was permitted to intervene at the hearing on the basis of an existing collective-bargaining agreement with the Employer. Carpenters' Local 1418, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, herein called Carpenters' Union, and Boilermakers' & Blacksmiths' Local No. 749, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers of America, AFL-CIO, herein called Boilermakers' Union, were permitted to intervene at the hearing on the basis of a showing of interest. Subsequently, on December 2, the Boilermakers' Union withdrew as an intervenor in this case.

Director found on the basis of this testimony that the work force at that time constituted "a substantial and representative segment of the projected employee complement," and directed an election in a unit of all production and maintenance employees of the Employer at the Employer's Lockeford, California, plant. The Boilermakers' Union, which intervened in that case, requested the Board to review the Regional Director's decision and dismiss the petition on the ground, among others, that the expanding size of the unit made the petition premature. On April 30, the Board, in a telegraphic order, denied the Boilermakers' Union's request for review.

There were 21 employees, in 18 or 19 job categories, eligible to vote at the election held on May 11 and as a result of that election the Steelworkers Union was certified on May 19 as bargaining representative of the employees in the unit. On August 23, the Petitioner filed the instant petition, requesting decertification of the Steelworkers Union as bargaining representative of the employees in the same unit, and, on September 7, the hearing was held in the present case. At the time of the hearing, there were approximately 80 employees in the unit.

Section 9(c) (3) of the Act provides: "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held." In implementation of this statutory policy, the Board has adopted the policy of dismissing forth with petitions filed more than 60 days prior to the expiration of the 12-month period.³ As noted, the instant petition was filed approximately 9 months prior to the expiration of the 12-month statutory period. The Petitioner and the Carpenters' Union urge in substance that no election would have been ordered by the Board in April if the full extent of the expansion in the size of the unit had been known at that time; that the employees who participated in the election were not representative of the larger number of employees now at the plant; and that, therefore, the election held on May 11 was not a "valid" election which would preclude the holding of an election at this time.

We find no merit in this contention. The election was held in the same unit of employees as that in which the Petitioner now seeks an election. Apart from the question of expanding unit, it is not argued that this election was not "valid" within the meaning of Section 9(c) (3). At all times since the time of the March hearing and the May election, the Employer has been producing essentially the same types of finished goods, with no substantial change in the number of job categories. It is true that the number of employees at the plant has increased considerably and that at the hearing in the earlier case the

³ See *Vickers, Incorporated*, 124 NLRB 1051, 1052-1053.

Employer did not accurately predict the number of employees it would shortly have at the plant. However, this fact, we believe, does not impair the validity of an election which was valid when held.

Under these circumstances, and on the record as a whole, we find that, because of the valid election held on May 11, 1965, the statute precludes us from directing a new election to be held before the expiration of 12 months from that date. We shall, therefore, in accord with Board policy, dismiss the petition herein.⁴

[The Board dismissed the petition.]

⁴ *Fedders-Quigan Corporation*, 88 NLRB 512, cited in *Ray Brooks v. N.L.R.B.*, 348 U.S. 96, 101-102. In *Fedders-Quigan*, the Board held that an increase in employment from 15 to 167 employees in slightly over 4 months did not impair the validity of an election for the purpose of applying the bar of 9(c) (3).

Cleveland Stereotypers' Union No. 22, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO and Western Press Incorporated. *Case No. 8-CD-68. February 2, 1966*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Western Press Incorporated, herein called the Employer, alleging a violation of Section 8(b) (4) (D) by Cleveland Stereotypers' Union No. 22, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, herein called the Stereotypers. Pursuant to notice, a hearing was held on November 4 and 5, at Cleveland, Ohio, before Hearing Officer John P. Falcone. The Employer, the Stereotypers, and Cleveland Printing Pressmen and Assistants' Union, Local 56, AFL-CIO, herein called the Pressmen, appeared at the hearing and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The Employer and the Pressmen filed briefs which have been duly considered by the National Labor Relations Board.

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 Jenkins and Zagoria].

156 NLRB No. 110.

217-919-66—vol. 156—78