Keller Plastics Eastern, Inc. *and* Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 22–CA–2310. March 10, 1966*

DECISION AND ORDER

Upon charges duly filed by Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint dated May 14, 1965, against Keller Plastics Eastern, Inc., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the Respondent, Local 11 of the Teamsters, and Local 666, Concrete Products and Material Yard Workers Union, Allied Industries Division, I.H.C.B. & C.L.U. of A., AFL–CIO, party to a contract with Respondent and herein referred to as Local 666 or the Union.

The complaint alleges in substance that the Respondent violated the Act in that it unlawfully assisted the Union by executing a contract with it at a time when the Union did not represent a majority of its employees. It is further alleged that the enforcement of the union-security clause in such contract and the solicitation of employees by supervisors to sign union authorization and checkoff cards is also violative of the Act.

On June 3, 1965, Respondent filed a motion to dismiss alleging that the complaint failed to state a cause of action, in that it failed to allege that Respondent knew at the time it executed the contract that the Union did not then represent an uncoerced majority of the Respondent's employees. On June 25, 1965, Trial Examiner Sidney Lindner denied Respondent's motion to dismiss.

On July 7, 1965, all parties to this proceeding entered into a stipulation by which they waived a hearing before a Trial Examiner and the issuance by him of a Trial Examiner's Decision and Recommended Order and agreed to submit the case to the Board for findings of fact, conclusions of law, and an order, based upon a record consisting of the charge, the complaint, the answer, and the stipulation.

On July 13, 1965, the Board approved the stipulation and ordered the proceeding transferred to the Board. Thereafter, the Respondent and Local 666 filed briefs.[1]

[1] Respondent and Local 666 have also requested oral argument. As the pleadings, stipulation, and briefs adequately present the issues and positions of the parties, this request is denied.

Upon the basis of the stipulation, the briefs, and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New Jersey corporation and a wholly owned subsidiary of Keller Industries, Inc., of Miami, Florida, maintains its principal place of business at building 79, Old Federal Shipyard, South Kearny, New Jersey, where it is engaged in the manufacture, sale, and distribution of plastic surfboards, beach paraphernalia, and related products. During the past year, the Respondent shipped goods and materials valued in excess of $50,000 from its place of business in South Kearny, New Jersey, directly to points located outside the State of New Jersey. We find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 666, Concrete Products and Material Yard Workers Union, Allied Industries Division, I.H.C.B. & C.L.U. of A., AFL–CIO, are labor organizations as defined in Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In their stipulation, the parties stated that: (1) As of February 16, 1965, Local 666 represented an uncoerced majority of Respondent's employees in an appropriate unit, and that, as of such date, Respondent employed in the unit a representative complement of employees; (2) on or about February 16, 1965, Respondent recognized Local 666 as the bargaining representative of the Respondent's employees; (3) following recognition, Respondent and Local 666 bargained and reached agreement as to the terms of a collective-bargaining agreement and on March 10, 1965, executed a 3-year contract; and (4) at the time of the execution of the above-mentioned contract, on March 10, 1965, Local 666 did not have, and has not since that date had, the support of a majority of Respondent's employees in said appropriate unit.[2]

The parties further stipulated that the contract of March 10, 1965, contained a union-security clause which in substance requires that present employees shall become members of the Union at the end of

[2] There is no showing that a rival petition was on file at any time on or before March 10, 1965.

30 days after the execution of this agreement and that new employees shall become members of the Union 30 days following the date of employment; that on March 10 and various dates thereafter Respondent through its agents and supervisors solicited employees to sign union authorization and checkoff cards and warned that unless they did so they could be discharged pursuant to the contract's union-security provisions; and that on April 6, 1965, Respondent and Local 666 agreed in writing that those sections of the contract relating to union security would be eliminated from the contract in their entirety.

On the basis of the stipulated facts, we find that Local 666 represented a majority of Respondent's employees in an appropriate unit and that as of February 16, 1965, the Union was properly recognized by the Respondent as the statutory bargaining representative of its employees. The parties thereafter bargained and reached agreement on a contract executed on March 10 which contained a union-security clause. As of execution date of the contract, the Union no longer retained the support of a majority of the employees in the unit. It is undisputed, however, that the Respondent had nothing to do with the Union's loss of majority and that it was unaware at the time it executed the contract of the Union's loss of majority.

The General Counsel contends that the Employer gave unlawful assistance to the Union in violation of Section 8(a)(2) and (1) of the Act by executing a contract with the Union at a time when the Union was not in fact the designated representative of a then majority of the employees. He further asserts that Respondent's lack of knowledge that the Union had lost its majority is immaterial to a finding of a violation, citing as precedent thereof the United States Supreme Court decision in the *Bernhard Altmann* case.[3]

In *Bernhard Altmann*, the Supreme Court concluded that an employer and a union violated Section 8(a)(2) and 8(b)(1)(A), respectively, by executing a contract in the bona fide belief that the union represented a majority of the employees since, as was subsequently disclosed, the union did not then or at any prior time in fact represent a majority. While *Bernhard Altmann* clearly established that neither an employer's absence of knowledge of a union's lack of majority status nor the good-faith contrary belief is relevant in determining whether employer's recognition of a minority union constitutes unlawful assistance, the present case is distinguishable. In *Bernhard Altmann*, recognition was *invalidly* granted, whereas in the present case recognition was *validly* granted. Thus, the issue here is whether a bargaining relationship established by lawful recognition of a union representing a majority of the employees can be disrupted by the union's subsequent loss of majority status prior to execution of a contract.

[3] *International Ladies' Garment Workers' Union, AFL–CIO* v. *N.L.R.B.*, 366 U.S. 731.

Collective-bargaining relationships normally arise out of a Board certification, or as the result of a Board remedial order following a finding of an unlawful refusal to bargain, or a settlement agreement, or, as here, from voluntary recognition of a majority union. In the case of a certified union, the Supreme Court stated in *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96, 98:

> The issue before us is the duty of an employer toward a duly certified bargaining agent if, shortly after the election which resulted in the certification, the union has lost, without the employer's fault, a majority of the employees from its membership.

In affirming the Board's conclusion that the employer violated the Act in refusing to bargain despite the employees' subsequent repudiation of the union, the Court indicated its approval of the Board's Rules and Regulations relating to the continuity of union representative status including its rule that a certification must be honored for a reasonable period, ordinarily 1 year in the absence of unusual circumstances, despite any interim loss of majority.

In the area involving the bargaining responsibility of an employer after a Board-issued bargaining order or settlement agreement, the same principle has been followed. Thus, in *Franks Bros. Company* v. *N.L.R.B.*, 321 U.S. 702, the Supreme Court held that the Board had properly ordered an employer to bargain with a union which had lost its majority status after the employer had wrongfully refused to bargain. The Court stated (321 U.S. at 705–706):

> But, as the remedy here in question recognizes, a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. See *N.L.R.B.* v. *Appalachian* [*Electric*] *Power Co.*, 140 F. 2d 217, 220–222; *N.L.R.B.* v. *Botany Worsted Mills*, 133 F. 2d 876, 881–882. *After such a reasonable period* the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships. [Emphasis supplied.]

More recently, in *N. J. MacDonald & Sons, Inc.*, 155 NLRB 67, the Board concluded that an employer's refusal to bargain violated the Act despite a union's loss of majority after approximately 6 months of bargaining, all of which took place subsequent to a settlement agreement. In so concluding, the Board cited its language in *Poole Foundry and Machine Company*, 95 NLRB 34, 36, enfd. 192 F. 2d 740 (C.A. 4), cert. denied 342 U.S. 954, as follows:

> It is well settled that after the Board finds that an employer has failed in his statutory duty to bargain with a union, and

orders the employer to bargain, such an order must be carried out for a reasonable time thereafter *without regard to whether or not there are fluctuations in the majority status* of the union during that period.... [Emphasis supplied.]

With respect to the present dispute which involves a bargaining status established as the result of voluntary recognition of a majority representative, we conclude that, like situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining. Such negotiations can succeed, however, and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.

Under the circumstances herein, we find to be reasonable the 3-week period from February 16, the date recognition was lawfully accorded, until March 10, the date the contract was executed.[4] Accordingly, we find that the Union remained the statutory bargaining representative when Respondent and the Union executed the contract on March 10, 1965, and we therefore conclude that Respondent did not violate Section 8(a)(2) of the Act by the execution of that contract, or Section 8(a)(3) by the inclusion of a union-security provision in that contract.

As to the allegation regarding supervisory solicitation of employees to sign union authorization and dues checkoff cards, the stipulated facts do not establish that supervisors engaged in such solicitation in a coercive or otherwise unlawful manner, or that employees were advised that they must join the Union before their 30-day grace period had expired. In view of the lawful union-security and voluntary checkoff provisions of the applicable contract, we are unable to conclude on the record before us that the supervisors did more than merely advise employees of their contractual obligations to join the Union and of the availability of the checkoff as a method of paying lawfully required union dues. We therefore find no adequate support for the alleged violations of Section 8(a)(1), (2), or (3) of the Act, based on the aforesaid solicitation.

Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

[4] Absent evidence to the contrary, we have accepted (as has the General Counsel) Respondent's assertion that at the time it executed the contract it was unaware of the Union's loss of majority status. In addition, there is nothing in the record to indicate that Respondent was aware of the presence of the Teamsters Union, the Charging Party herein.