

America Beef Packers, Inc. and United Packinghouse, Food & Allied Workers, AFL-CIO, District No. 3, Petitioner. Case 18-RC-7058

January 17, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Charles J. Frisch. Thereafter the Petitioner and Intervenor Morgan¹ each filed a brief.

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.

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 Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of 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 petition seeks a unit of the Employer's employees located at its Oakland, Iowa, beef slaughtering plant. The Employer and Intervenor Morgan assert that their prior 3-year collective-bargaining contract, executed on January 17, 1967, is a bar. The Petitioner contends, *inter alia*, that the contract is not a bar because it contains an unlawful checkoff clause.

The record shows that the Employer voluntarily recognized Intervenor Morgan, after a majority showing of authorization cards, and shortly thereafter said contract was negotiated between them.

Article II of the contract is as follows:

¹ Arthur L. Morgan, an individual who was recognized by the Employer as the exclusive bargaining representative for all its production and maintenance employees, intervened at the hearing. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, also intervened.

² Section 302 sets forth the conditions under which a checkoff may be

During the period of this agreement, the Company shall deduct, as to each employee who shall authorize it in writing in the appropriate form or whose valid and effective authorization is now on file with the Company, and for so long as such authorization shall remain valid or effective, from the first pay payable to each member each month, the regular monthly Union dues and the initiation fee of the Union and promptly remit the same to Arthur L. Morgan.

The Petitioner contends that this article provides for employer payments to an individual representative of his employees, a misdemeanor under Section 302 of the Landrum-Griffin Act of 1959 (Public Law 86-257),² and because of this unlawful checkoff clause the contract is no bar to an election. The Petitioner cites neither rules nor interpretations by any agency charged with the enforcement of Section 302, nor any court decision, to support its contention. Rather, it cites the Board case of *The Grand Union Company*, 132 NLRB 1037, 1038.

That case is distinguishable, however, in that it involved an unfair labor practice issue arising from a proviso to Section 8(a)(3) of the Act, authorizing a union-security contract with a labor organization; whereas the instant case involves a contract with checkoff clause which allegedly constitutes a misdemeanor, but not an unfair labor practice. The Board held in *Gary Steel Supply Company*, 144 NLRB 470, 472-473, that such a contract will be considered effective as a bar to a representation proceeding, even though it contains a checkoff provision which fails to spell out the requirements of the proviso of Section 302(c)(4) of the Act,³ unless the checkoff provision is either unlawful on its face or has been otherwise determined to be illegal in an unfair labor practice proceeding or in a proceeding initiated by the Attorney General.

In the instant case, we find that the checkoff provision was not unlawful under these standards, and accordingly find that the contract is a bar to the representation proceeding.

In view of our findings we shall dismiss the petition herein.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

a criminal offense, prosecutable by the Department of Justice.

³ The checkoff provision in the *Gary Steel* contract was not conditioned on any written assignment by each employee involved, as required by the proviso to Section 302(c)(4).