

Fisher-New Center Co.¹ and Melvin F. Claspell, Petitioner and Local 79, Building Service Employees' International Union, AFL-CIO. Case 7-RD-720

March 29, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Iris H. Meyer of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. No briefs were filed by any of the parties.

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 purposes of the Act to assert jurisdiction herein.

2. The Petitioner, an employee of the Employer, asserts that the Union, a labor organization, is no longer the representative, as defined in Section 9(a) of the Act, of the employees designated in the petition.

3. The question concerning representation:

The Union contends that "... the classification represented by the Petitioner is a part of the overall appropriate unit which has been covered by collective bargaining agreements and has a past history of said collective agreements, ..." and that a question of representation does not exist. The Employer takes no position on this matter.

In the early part of 1963 the Employer recognized and, through Allied Maintenance Service Corporation,² entered into a collective-bargaining agreement with the Union effective from March 25, 1963, to March 24, 1965, covering a unit of "... all employees of the Employer at the Fisher-New Center Buildings, as listed in Schedule 'A' ..." Listed in Schedule "A" are servicemen, janitors, bronze maintenance, marble maintenance, window washers, janitresses, elevator operators, starters,

watchmen, carpenters, locksmiths, plumbers, electricians, engineers, elevator maintenance, storeroom, receiving dock, checkers, doormen, floormen, servicemen-garage, lubrication, lead washers, and parking lot attendant. The second collective-bargaining agreement entered into by the Employer and the Union, which expired on November 30, 1967, covers the same bargaining unit. The Union contends that the employees designated in the petition as the "watchmen" do not constitute an appropriate unit and that the appropriate unit for a decertification election is that described in the collective-bargaining agreements. Petitioner contends that he and the employees designated in the petition constitute a guard unit, and that such unit is appropriate for the purpose of conducting a decertification election.

The record shows that Petitioner and the employees designated in the petition wear blue uniforms and police-type badges and carry nightsticks. They patrol in and around the Employer's buildings and have access to all doors. They prevent persons from carrying packages out of the buildings without a signed pass; keep a log of all persons, including other employees of the Employer, entering the buildings on Sundays and holidays and from 7 p.m. to 7:30 a.m. on all other days; maintain order in the buildings; and are authorized to call the police in the event of trouble. These employees also "... escort office personnel to and from the bank with money, and to and from the garage and main office with the parking lot change at night." While these employees spend a portion of their time receiving and forwarding service calls and have some responsibility to see that repairs are made, we find that they are primarily concerned with protecting the Employer's property and that of the Employer's tenants, and with enforcing the Employer's rules for the maintenance of order in the building. We conclude they are guards within the meaning of the Act.³

Normally the Board will not direct a decertification election where the petition seeks to raise a question concerning representation with respect to only a part of an existing unit.⁴ But where as here the Union is the currently recognized majority representative of a mixed unit of guards and non-

¹ The Employer's name appears in the caption as amended at the hearing.

² The record shows that the first agreement was signed on behalf of the Employer by Allied Maintenance Service Corporation covering the same unit and the same premises as are involved herein. The record does not clearly show the relationship between the Employer and Allied Maintenance.

³ *Columbia Pictures Corp.*, 152 NLRB 899, *Cumberland Shoe Corp.*, 144 NLRB 1268, enf'd 351 F.2d 917 (C.A. 6); *Thunderbird Hotel, Inc.*, 144 NLRB 84, *West Virginia Pulp and Paper Co. (Hinde & Dauch Division,*

Detroit Plant), 140 NLRB 1160, *Kelly Brothers Nurseries, Inc.*, 140 NLRB 82, *St. Regis Paper Co.*, 128 NLRB 550.

⁴ The Board first established the rule in *Campbell Soup Co.*, 111 NLRB 234, where it stated on p. 235, that "[m]indful of the fact that Congress has made no provision for the decertification of part of a certified or recognized bargaining unit and in the absence of any statutory requirement or overriding policy considerations to the contrary, we find that the existing bargaining unit is the unit appropriate for the purposes of collective bargaining in these ... [decertification] cases."

guards, other considerations are present. The Board is prohibited by Section 9(b)(3) of the Act from deciding that a unit such as contended for the the Union is appropriate for the purposes of collective bargaining.⁵ A dismissal of the instant petition on the ground that the only appropriate unit for decertification is one coextensive with the existing contract unit would in effect constitute an acceptance by the Board of the appropriateness of the mixed unit of guards and nonguards.⁶ Thus, in our view, the statutory requirement of Section 9(b)(3) makes necessary an exception to the general rule established in *Campbell Soup, supra*.

Direction of an election in the present case is consistent with the Board's duty to encourage labor contracts in accord with the policies of the amended Act, and to discourage those contracts that are directly contrary to such policies. Thus, such action by the Board "... will not disturb the existing bargaining relationship between the Employer and Intervenor with respect to the broad unit of production and maintenance employees ... [and] gives recognition to the basic intent of Con-

gress enacting ... [Section 9(b)(3)], that is, that guards should not be included in the same unit with other employees."⁷ As stated in *Monsanto, supra*, the direction of an election in the requested unit of guards may well have the result of excluding from the broader unit "the very category of fringe employees which should not have been included in the otherwise appropriate ... unit."⁸

We find that a question 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.

4. The appropriate unit:

We find that all watchman employed at the Employer's Fisher-New Center buildings at Detroit, Michigan, excluding the chief watchman, all other employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[Direction of Election⁹ omitted from publication.¹⁰]

⁵ Section 9(b)(3) of the Act provides in pertinent part " That the Board shall not (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises " See *Retail Clerks Union Local No 324 (Vincent Drugs No 3, Inc)*, 144 NLRB 1247, 1254, fn 11, where a Board panel construed this prohibition as meaning appropriate "for any purpose " Cf *William J Burns International Detective Agency, Inc*, 134 NLRB 451

⁶ See *Vincent Drugs, supra*, at pp 1252 and 1253, where the Board discusses its decision in *Great Falls Employers Council, Inc*, 114 NLRB 370

⁷ See *Monsanto Chemical Co*, 108 NLRB 870, 871

⁸ *Ibid*

⁹ An election eligibility list, containing the names and addresses of all the

eligible voters, must be filed by the Employer with the Regional Director for Region 7 within 7 days after the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed *Excelsior Underwear Inc*, 156 NLRB 1236

¹⁰ We find on the basis of the record, which shows that the Union represents all the employees in the building maintenance unit, that the Union admits to membership employees other than guards We are precluded by Section 9(b)(3) from certifying the Union as the representative of the employees involved herein Accordingly, in the event the Union wins the election, the Board will only certify the arithmetical results of the election See *Harris Foundry & Machine Co*, 76 NLRB 118, 120, fn 6