

**Midway Lincoln-Mercury, Inc. and District Lodge 71, International Association of Machinists & Aerospace Workers, AFL-CIO; and Local 552, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.**  
Case 17-RM-421

December 12, 1969

**DECISION AND DIRECTION OF  
ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS  
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 Patrick E. Rooney, Hearing Officer. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 17, this case was transferred to the Board for decision. The Employer-Petitioner has filed a timely brief.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the brief filed herein, 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 labor organizations involved herein claim to represent certain employees of the Employer.

3. Machinists Lodge 71 contends that the petition was untimely filed with regard to its contract with the Employer and must therefore be dismissed on grounds of contract bar. We find no merit in this contention.

Machinists Lodge 71 and Teamsters Local 552 were jointly certified on January 11, 1968, in Case 17-RC-5630, as the joint representatives of the Employer's service department and maintenance department employees. After joint negotiations, the Employer, on January 16, 1968, entered into a contract with Machinists Lodge 71 purporting to cover all employees who are members of that Union<sup>1</sup> who are employed in the service department, and a contract with Teamsters Local 552 purporting to cover all the remaining employees in the service and parts departments. The Machinists' contract is effective through October 18, 1969, and the Teamsters' contract through November 18, 1969.

On August 13, 1969, the Employer filed a petition (Case 17-RM-418) asserting that its service department employees no longer wished to be represented by Machinists Lodge 71. At the Regional Office's suggestion that the unit described was inappropriate, the Employer withdrew that petition on August 28, 1969. The next day, August 29, the Employer filed the petition in this case, asserting that its service and maintenance department employees no longer wished to be represented by Machinists Lodge 71 and Teamsters Local 552.

The parties agree that the unit described in the instant petition is the same as the unit involved in Case 17-RC-5630, and that it is an appropriate unit.<sup>2</sup> The parties also stipulate that the Employer's current contracts with Machinists Lodge 71 and Teamsters Local 552 cover the employees in this unit, and were negotiated and administered by the Unions jointly.

In *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001, the Board, modifying *Deluxe Metal Furniture Company*, 121 NLRB 995, 1001, established a period, from 90 to 60 days before the expiration of a contract, during which a petition for an election among the employees in the unit covered by the contract would be considered timely filed. The Board reserved the 60 days immediately prior to the expiration of the contract as an insulated period during which the parties could negotiate and execute a new or amended contract without the disruption of established labor-management relations caused by a rival petition.

Machinists Lodge 71, although it filed no brief with the Board, had contended at the hearing that the instant petition must be dismissed because it was filed during the 60-day period preceding the termination date of its contract with the Employer. However, it is clear that the petition was timely with regard to the Teamsters Local 552 contract, and as the two labor organizations are joint representatives of all the employees in the unit covered by both contracts, which were jointly negotiated and administered, we find that it was timely as to both.<sup>3</sup> To require the petition to be filed 90 to 60 days before the expiration date of both contracts, whose expiration dates are 30 days apart, would render it virtually impossible for these employees to exercise a right enjoyed by others to change representatives at regular intervals if they so desire. Such an unfair

stated below, we find it unnecessary to determine whether it is invalid as a bar because it is a "members only" contract. See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1164.

<sup>2</sup>In view of the agreement to the appropriateness of the single-employer unit, we find it unnecessary to rule on the Machinists' contention at the hearing that the Employer's purported withdrawal on September 30, 1969, from Motor Car Dealers Association of Greater Kansas City of authority to represent the Employer in collective-bargaining negotiations was improper.

<sup>3</sup>Although not crucial to our determination herein, we note that Machinists Lodge 71 received notice of the existence of a question concerning representation among these employees prior to the insulated period of its contract by virtue of the petition filed in Case 17-RM-418.

<sup>1</sup>In view of our finding that this contract is not a bar for the reasons

result was not intended by the Board and would not effectuate the policies of the Act. We therefore find no contract bar to the instant petition.

Accordingly, we find that a 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.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service and maintenance department employees, including mechanics, painters, porters, washmen, partsmen, parts drains, body mechanics, and tubemen; excluding all other

employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

[Direction of Election<sup>4</sup> omitted from publication.]

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<sup>4</sup>In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v Wyman-Gordon Company*, 394 U S 759. Accordingly, it is hereby directed that 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 17 within 7 days of 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.