

**Margaret L. Creque d/b/a Community Motors  
and Virgin Islands Labor Union AFL-CIO,  
SIU. Case 24-RM-150**

January 16, 1970

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS  
FANNING, BROWN, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Victor Comolli, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 24, this case was transferred to the National Labor Relations Board for decision. A brief has been filed by the Employer-Petitioner.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings 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 purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent the 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 Employer-Petitioner seeks a unit of "all mechanics, mechanic helpers, mechanic apprentices, car washers and stock clerks employed at the Employer's establishment at Veterans Drive, Charlotte Amalie, St. Thomas, Virgin Islands, excluding office clerical employees, secretaries, car sales supervisors, parts department supervisors, service department supervisors, and guards and supervisors as defined in the Act."<sup>1</sup> The Union contends that this proceeding is improper as it has already been certified by the Virgin Islands Department of Labor as the representative of these employees of the employer.

The Employer is engaged in the retail sale of automobiles and spare parts, and in the servicing of automobiles in St. Thomas, Virgin Islands. On July 24, 1968, the Union filed a petition with the Government of the Virgin Islands of the United States, Department of Agriculture and Labor, requesting to be certified as representative of the

employees of the employer in the following unit:  
All mechanics, mechanic helpers, bookkeepers, car washers, parts salesman, yardman, except bona-fide supervisors with authority to hire and fire.

There are 10 employees in that unit.

On July 26, 1968, the Deputy Commissioner of the Department of Labor (V.I.) sent a "Notice of Conference" to the parties stating that a question of representation existed and a conference would be held on August 2, 1968. Conferences were held before the Commissioner on August 2, and September 11, 1968, all parties being represented. At the meeting of September 11, the Commissioner checked the Union authorization cards submitted with the petition against the names of the employees provided by the Employer, and found that the Union had a majority of interest of more than 60 percent of the employees and stated that on that basis he would certify the Union, denying the Employer's request for an election. The Union had submitted a card for each employee of the Employer. The authority of the Commissioner to certify a union solely on the basis of a card check, rests in Virgin Islands Code, Title 24, Section 67.<sup>2</sup> The Certification issued by the Commissioner on September 11, 1968, grants the unit requested by the Union.

On November 21, 1968, the Union submitted its proposals to the Employer by letter. The Union received no reply to its letter, and made several telephone calls in an effort to set a date for a meeting. The Employer contacted NLRB Region 24 by letter of December 6, 1968, stating that the Union had notified it of its certification, and requested information as to whether or not the NLRB had jurisdiction. In the event the NLRB did have jurisdiction, the Employer requested a Board-conducted election among its employees. On December 10, 1968, the Regional Director for Region 24 sent various forms, including a petition form, to the Employer which were completed and returned on December 16, 1968.

#### <sup>1</sup>Selection of Representatives' elections

(a) Whenever a question arises concerning the representation of employees, the Commissioner may investigate such controversy and certify to the parties in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Commissioner shall provide for an appropriate hearing upon due notice, and may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives. Membership cards or statements sworn to before a notary public by not less than 60 percent of the employees in an appropriate unit shall be accepted as valid proof of the designation by a majority of the employees of such representative.

(b) The Commissioner shall have the power to determine who may participate in the election, when ordered, and to establish the rules governing such election. No election need be directed by the Commissioner solely because of the request of an employer or of employees prompted thereto by their employer, nor shall any individual employed for the duration of a strike or lockout be eligible to vote in such election, nor shall such election be conducted on the employer's property during working hours or with his participation, assistance or supervision

<sup>1</sup>The Employer's motion to amend the petition was granted at the hearing.

After the Union threatened to take some action unless a meeting was held to discuss the proposals it had submitted, the Employer, represented by counsel, met with the Union on the evening of December 16, 1968. During the 2-hour meeting that ensued, the Employer did not mention that it had filed a petition with the NLRB, but discussed the Union's proposals and compared them with the benefits it was then offering to its employees.

The Employer's petition was received by the Region on December 17, 1968; the Region in turn notified the Union of the petition on December 21 or 22, 1968. No further meetings were held between the parties after the petition was filed. Thereafter, the Union attempted to hold a meeting with the employees of the Employer, but was unsuccessful.

It is clear that the Union herein was duly certified according to the Law of the Virgin Islands. At no time did the Employer question the majority status of the Union or the validity of the cards. There is

no claim that the cards were improperly solicited. The Employer did not notify the Union that it did not consider itself bound by the Virgin Islands certification. It appears that the Employer engaged in numerous delaying tactics from the date of certification until the date of the meeting, December 16, 1968, the same date the instant petition was mailed. The Employer did not advise the Union that it was about to file, or in fact had filed the RM petition when it met and engaged in discussion of contract terms.<sup>3</sup> In these circumstances, we find that no question concerning representation exists, and shall dismiss the petition.

#### ORDER

It is hereby ordered that the petition filed in Case 24-RM-150 be, and it hereby is, dismissed.

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<sup>3</sup>See *Keller Plastics Eastern*, 157 NLRB 583.