Ora Skiles, Jr., d/b/a Overhead Door Company of Modesto *and* United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local No. 1235. Case 20-RM-1157

September 17, 1969

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, BROWN, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before Hearing Officers Donald G Twohey, Edward S. Kaplan, and John H. Immel. Following the hearings, 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 20, this case was transferred to the National Labor Relations Board for decision. Briefs have been timely filed by the Employer-Petitioner and the Union.

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 Board has reviewed the Hearing Officers' rulings made at the hearings and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein, the Board finds:

1. Overhead Door Company of Modesto, herein referred to as Overhead or the Employer, is solely owned by Ora Skiles, Jr., who is also sole proprietor of Pacific Glass Co. and the primary and controlling stockholder of Sky Wolf Industries, Inc d/b/a Pacific Insulation. The Employer is engaged in the supplying and installation of garage doors in residential and commercial buildings. During calendar year 1968, the Employer received shipments of goods from outside the State of California valued in excess of $50,000.00. The Board is satisfied that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

2. The labor organization involved herein claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union contends that it has a current collective-bargaining agreement with the Employer that is a bar to election herein. The Employer contends that it has not entered into, nor authorized anyone to enter into on its behalf, any collective-bargaining agreement.

Overhead employs three carpenters. Punchochar, who was a union member, was hired by the Employer in December 1967. Pursuant to a private agreement with him at that time, the Employer has since made monthly payments to the Union trust funds on behalf of this employee. No payments have been made by the Employer for any other employee, past or present.

In February 1969, the Union grieved to the Employer for failure to make proper payments to the trust funds for all his employees, as allegedly required under the contract it claimed was in force and effect. The Employer denied the existence of such an agreement and filed the instant petition

The Union submitted in evidence a copy of the purported agreement, dated March 1, 1968, upon which appears the signature of Paul Cassle for the Employer. The Employer contends that Cassle was no more than its sales representative, and had no authority to act for it in labor matters The Employer contends rather that Cassle was requested to speak informally to the Union business agent, and obtain the Union's permission to use Punchochar and to pay his trust funds obligations.

Cassle testified that he not only had been told to sign for the Employer, but that he informed Skiles that he had signed an agreement with the Union on behalf of the Employer. He further testified that he gave Skiles a copy of the agreement signed by the Union alone. Skiles testified that Cassle approached him with a copy of an agreement signed by the Union, and requested that he sign it Skiles refused to do so, and heard no more of the matter until the Union grieved, almost a year later. Skiles further testified that he told Cassle he was unable to sign any contract at that time in any event because he was still bound by a contract with the National Association of Independent Unions (NAIU).[2]

In view of the conflicting testimony of Cassle and Skiles, the Union's long delay between the time the purported contract began and the demand that the employer honor the contract, and the fact that the employees have never had the opportunity to vote as to whether or not they wished to be represented by the Union, we are of the opinion, that an election will serve the best interest of all parties, and is necessary to effectuate the purposes of the Act. Accordingly, we shall direct that an election be held among the employees in the unit hereinbelow found appropriate.

[1] Moreover, the combined total gross receipts of the three above-named companies during calendar year 1968 were in excess of $500,000, enough to satisfy the Board's jurisdictional standards if it were necessary to consider those grounds

[2] The contract referred to had originally been executed on March 16, 1964, and presumably automatically renewed on March 16, 1967, to run through March 16, 1968, when it presumably ended The NAIU is now defunct, and no one contends it is still a party to any contract that should bar the instant petition

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

All carpenters employed by the Employer, Ora Skiles, Jr., d/b/a Overhead Door Company of Modesto, California, excluding all other employees, guards, and supervisors as defined in the Act

[Direction of Election[3] omitted from publication.]

[3]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, *N L R B* 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 20 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