

Automated Business Systems, Division of Litton Industries, Inc.¹ and Robert L. Greer, Petitioner.
Case 27-RD-233

March 18, 1971

**DECISION AND DIRECTION OF
ELECTION**

BY 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 Hearing Officer Allison E. Nutt of the National Labor Relations Board. Thereafter, the Employer and the Intervenor² filed briefs.

Pursuant to the provisions of Section 3(b) of the Act, the 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 parties stipulated and we find that 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 Intervenor is a labor organization within the meaning of the Act.

3. We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Employer, a Delaware Corporation, is engaged in the printing of business forms at its Ogden, Utah, facility. Since 1956 the Intervenor has represented employees of the Employer at the Ogden, Utah, facility in the following unit:

All employees who perform work in the finishing operations of the printing department, including shipping, receiving, and janitors, but excluding all other employees, sales personnel, engineers, office and clerical employees, guards, watchmen, and supervisors as defined in the Act.

Recognition was granted voluntarily and there has been no formal Board certification. There are approximately 30 employees in the unit.

The Intervenor and the Employer have been parties to a series of collective-bargaining agreements. The term of the current agreement is from August 1, 1969, to July 31, 1971. Although the Intervenor's International has not participated in past contract negotia-

tions, it has been a signatory to all of the contracts except the present one. In 1968 the International forbade its president from signing any future contracts which did not provide for a shorter workweek. As the current contract does not contain such a provision, the International president refused to sign it. Neither the union constitution nor the current contract requires International approval of the contract.

In April 1970³ the Intervenor had 32 members. After April the members began revoking their checkoff authorizations and resigning from the Intervenor. The current membership consists of four people, three of whom are life-member retirees and one of whom is a retiree paying a per capita tax to the International. On July 1 the Intervenor held a meeting of unit employees. The employees voted 26 to 3 to "disaffiliate" from the Union. They also voted to request the Employer to terminate the contract. All of the unit employees signed a petition to the International stating that they were canceling their membership, effective July 2. All of the employees also signed a petition to the Employer asking him to terminate the contract as of July 2. The president and secretary of the Intervenor presented the second petition to the Employer on July 2. They informed Robert Panaro, the Employer's vice president for industrial relations, that they were acting as officers of the Intervenor in presenting this petition. Panaro agreed to terminate the contract and signed the petition to that effect.

On July 6 all officers of the Intervenor informed the International, by mail, that they were resigning their official positions. On July 8 Greer, an employee, filed this petition for a decertification election. On July 13 the International appointed Walter R. Stansberry, an International representative, to be trustee of the Intervenor. The Employer, at the request of the employees, stopped any further dues checkoff. The record shows that the Intervenor has \$4.88 in a bank account, has not held any meetings since July 1, and does not have any grievances pending. The only members of the Intervenor are the four retirees previously mentioned.

The Petitioner and the Employer take the position that the agreement has been terminated by mutual assent and that the Intervenor is defunct. The Intervenor contends that the contract has not been effectively terminated and that it is not a defunct labor organization.

The Intervenor asserts that the action of the members was *ultra vires*. As authority for this contention it cites a provision in the union constitu-

and the Bookbinders.

³ This and all dates hereafter mentioned are 1970, unless otherwise stated.

¹ The name of the Employer appears as amended at the hearing.

² International Brotherhood of Bookbinders, Local 77, AFL-CIO, hereinafter referred to as the Intervenor, was permitted to intervene on the basis of a current collective-bargaining agreement between the Employer

tion which forbids local members from suspending or in any way affecting a local contract. While the union constitution prohibits such action by the members, it does not establish what procedure is to be followed to achieve termination of a contract.

In *North American Philips Company, Inc.*, 78 NLRB 666, 668, the Board held that the failure of a local union to give notice to its international of the termination of a contract was not sufficient to invoke the contract as a bar to a representation petition. Despite the fact that the contract required the local to notify the international, the Board found that the international, although it had signed the contract, had no real interest in the contract and that it was only a nominal party hereto.

In *Remington Rand, Inc.*, 78 NLRB 181, the international constitution required a local to notify the international of a proposed contract termination. The Board, stating that the local's failure to notify the international was not material to the determination of whether the contract was a bar to a representation petition, held that the contract was not a bar.

Under the circumstances in this case, we find that the members and officers of the Intervenor had the authority to terminate the contract and that their actions in that respect were effective. The Board stated in *Deluxe Metal Furniture Company*.⁴ 121 NLRB 995, 1004, that, "a contract may be terminated by mutual assent of the parties" and that "a contract which has been terminated at a time other than during the 60-day insulated period will not bar a petition. A contract will be deemed terminated if it is terminated by mutual assent . . ." We find that the contract has

been effectively terminated and that it is not a bar to this petition.

Trustee Stansberry claims that the Intervenor is ready, willing, and able to represent the unit employees. In these circumstances, and upon the entire record in this case, we find that the Intervenor is not defunct and, accordingly, that a question affecting commerce exists concerning the representation of employees of the Employer.

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

All employees who perform work in the finishing operations of the printing department, including shipping, receiving, and janitors, but excluding all other employees, sales personnel, engineers, office and clerical employees, guards, watchmen, and supervisors as defined in the Act.

[Direction of Election⁵ omitted from publication.]

MEMBER BROWN, dissenting:

Contrary to my colleagues, I would find that Local 77 has become defunct. The undisputed facts show that the unit employees voted to "disaffiliate" from the Local. All of the unit employees then resigned from the Local. Shortly thereafter, all of the officers resigned their official positions. The Local has not held a meeting since voting to disband. No grievances are pending. The only individuals remaining as members of the Local are four retirees. Under these circumstances, I would find the Local to be defunct and would therefore dismiss the petition in this case.

by the Employer with the Regional Director for Region 27 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.

⁴ See also *G. C. Murphy Company*, 128 NLRB 908, 909.

⁵ 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 Co.*, 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