

Automated Business Systems (Division of Litton Industries) and Leroy C. Rackham and Ogden Printing Pressmen and Assistants Union, No. 307, Subordinate to the International Printing Pressmen and Assistants Union of North America.¹ Case 27-RD-229

March 19, 1971

**DECISION ON REVIEW AND
DIRECTION OF ELECTION**

BY MEMBERS FANNING, BROWN, AND JENKINS

On June 22, 1970, the Regional Director for Region 27 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Petitioner's petition for a decertification election in a unit of the Employer's pressroom and art department employees on the ground that a contract bar exists. The Employer thereafter filed a timely Request for Review of the Regional Director's Decision on the ground that substantial issues are raised as to his findings (1) that a contract bar exists and (2) that Local 307 is not defunct.

On September 2, 1970, the National Labor Relations Board by telegraphic Order granted the Petitioner's Request for Review. The Employer filed a brief on review.

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 considered the entire record with respect to the issues under review, including the Employer's brief on review, and makes the following findings:

The Employer takes the position that there is no contract bar because the contract between it and Local 307 was canceled by mutual assent of the parties and that the petition should have been dismissed solely on the ground that Local 307 is defunct.

The Employer began operations at its Ogden, Utah, plant about 1954 and since that time has voluntarily recognized Local 307 as the representative of employees in its pressroom and art department. In 1969, after timely notification, the Employer met with Local 307 representatives to negotiate a new contract, and on June 18, 1969, the Employer and Local 307 signed a memorandum of agreement stipulating that the existing contract would remain in full force and effect until midnight July 31, 1971, with specified modifications to be effective on August 31, 1969. Thereafter, on July 15, 1969, representatives of the Employer and Local 307 signed a formal contract based upon the memorandum of agreement.²

On August 11, 1969, Local 307 forwarded four fully signed copies of the new contract to its parent, International Printing Pressmen and Assistants Union of North America, herein called the International. After an exchange of letters, occasioned by the International's objections to certain provisions of the contract,³ the International agreed to underwrite the contract and on November 10, 1969, mailed to Local 307 three copies of the contract with DeAndrade's signature of approval. Apparently the Employer did not receive one of these copies of the contract and was never notified that the International had underwritten the contract.

Early in 1970, as a result of dissatisfaction with some of the International's policies, Local 307 members employed by the Employer agreed at a regular monthly meeting on February 12, 1970,⁴ to vote on the question of withdrawing from Local 307 at the next monthly meeting. At the regular meeting on March 12 the unit members, all of whom were present, voted unanimously to withdraw from Local 307,⁵ and, during the next few days all unit members revoked their checkoff authorizations.

At a special meeting on March 26, and on the following day, unit members signed two documents:⁶ one, addressed to Local 307, canceling their membership,⁷ and the other, addressed to the Employer, requesting cancellation of the contract.⁸ On or about March 27 the cancellation request was submit-

¹ Referred to herein as Local 307

² This contract refers to Local 307 as "subordinate to the International Printing Pressmen and Assistants' Union of North America" Article 1, section 2, B, states "This agreement can be modified or amended during its term only by written mutual agreement between Ogden Printing Pressmen and Assistants' Local Union No. 307 and the Employer" Article II provides that the contract shall be effective until midnight July 31, 1971, "and shall continue in effect from year to year thereafter until either party shall notify the other in writing of desire to terminate or modify"

³ In his letter of September 11, 1969, the International's president, Anthony J. DeAndrade, expressed surprise at a new provision in the contract which gave "management the right to unilaterally change the 37-1/2-hour workweek to a 40-hour workweek and the right to change the overtime provision so that daily overtime would not commence after 7-1/2 hours but after 8 hours" and urged Local 307 to renegotiate this particular clause. In a later letter DeAndrade explained that he could not take action which might be considered to be approval and endorsement by

the International as such action may prove detrimental to the International's members at the Athens, Ohio, Litton plant

⁴ Present at the meeting were 16-18 members, virtually all the employees in the unit. Although Local 307 has three members who are not employed by the Employer, it does not appear that they are represented by Local 307 for collective-bargaining purposes

⁵ Two of the three members of Local 307 not employed by the Employer arrived late at the meeting and were advised of the withdrawal vote

⁶ Among the signatories were the Local 307 officers, President Marvin D. Saunders and Secretary-Treasurer Rackham, and two other bargaining committee members. One employee, Marilyn Towers, was absent from the meeting but signed the documents on March 27, 1970

⁷ The document stated

We the undersigned wish to cancel our membership in Printing Pressmen's Local 307 Ogden, Utah effective March 26, 1970

⁸ The document stated

ted to Robert Panaro, the Employer's vice president for industrial relations. Panaro accepted the request, agreed to terminate the contract, and signed the request on behalf of the Employer.

On or about April 14, 1970, Rackham and Saunders resigned from their positions as officers of Local 307 and Jack Shipley and Dave Sickler, who retained their membership in Local 307, assumed the offices of secretary-treasurer and president, respectively. Rackham turned over all Local 307 records and a *pro rata* part of the Local 307 funds to Shipley. Sickler, the new president, testified that he intends to continue to service the 1969 contract between Local 307 and the Employer.

Upon the foregoing, especially the fact that the officers and bargaining committee members who signed the contract with the Employer also, together with the other employees in the unit, executed the cancellation agreement with the Employer, we find, contrary to the Regional Director, that no contract bar exists to the instant decertification petition. Moreover, as it is clear that Local 307 continues to exist under new leadership and claims to represent the employees involved, we find that it is not defunct. Therefore, as the Petitioner alleges that Local 307 is no longer the representative of the employees in the established unit, we find that a question 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.

We the undersigned request cancellation of contract between Automated Business Systems and Printing Pressmens Union Local 307 Ogden, Utah effective March 27, 1970

⁹ 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 Co.*, 394 U.S. 759 Accordingly, it is hereby directed that an election eligibility list,

Accordingly, we shall direct an election among the following employees whom we find constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All pressmen, senior and junior assistants, helpers, production assistants and apprentices in all steps of apprenticeship in the pressroom and art department at the Employer's Ogden, Utah, plant, excluding office clerical employees, employees represented by Bookbinders Local 77, Ogden, Utah, janitors, professional employees, guards and supervisors as defined in the Act.

[Direction of Election⁹ omitted from publication.]

MEMBER BROWN, dissenting:

As in *Automated Business Systems (Division of Litton Industries)*,¹⁰ I disagree with my colleagues. I would find the Union herein to be defunct for the reasons that all unit members voted to resign from the Union and signed a document to that effect; the Union's officers resigned and withdrew from the Union; the members voted to distribute the union funds among the membership (the three remaining nonunit members receiving a *pro rata* share); and there have been no union meetings and no business transacted by the Union since the unit members and officers withdrew and transferred the books to nonunit members. Under these circumstances, I would find the Union to be defunct and would therefore dismiss the petition in this case.

containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 27 within 7 days of the date of this Decision on Review 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

¹⁰ Case 27-RD-233, 189 NLRB No. 1.