

S. Abraham & Sons, Inc.¹ and Local 406, International Brotherhood² of Teamsters, Chauffeurs, Warehousemen and Helpers of America S. Abraham & Sons, Inc. and Warehouseman's Independent Local,³ Petitioner. Cases 7-RM-841 and 7-RC-10603

October 5, 1971

DECISION AND DIRECTION OF
ELECTION

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, an investigation was conducted by the Regional Director for Region 7. On April 9, 1971, the Regional Director informed the Employer that as his investigation disclosed the parties had not had a reasonable period of time to bargain collectively subsequent to the grant of recognition to the Union, the petition was being dismissed. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review with the National Labor Relations Board, and the Union filed a statement in opposition thereto.

On May 5, 1971, the Board issued a Ruling on Administrative Appeal by which it reinstated the petition and directed the Regional Director to proceed with a hearing to resolve substantial and material issues of fact and law disclosed by the investigation and set forth in the appeal.

On May 24 and June 3⁴ and 4, 1971, a hearing was held before Hearing Officer George Alexander. Following the hearing, the proceeding was transferred to the Board in Washington, D.C., pursuant to Section 102.67 of the Boards Rules and Regulations. Thereafter, briefs were filed by the Employer and Local 406.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

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

¹ Herein referred to as the Employer

² Herein referred to as Local 406

³ Herein referred to as the Independent

⁴ On June 3, 1971, the second day of the hearing, a petition was filed by Warehousemen's Independent Local covering the same unit alleged appropriate in Case 7-RM-841. The petition was numbered Case 7-RC-10630 and, for purposes of hearing, consolidated with Case 7-RM-841. The Hearing Officer treated the Independent as having

Upon the entire record in this proceeding, 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 organizations⁵ involved claim to represent certain employees of the Employer.

3. Local 406 contends that the instant petitions are barred by the recognition agreement it and the Employer executed on December 11, 1971, in contemplation of later bargaining.⁶

The record indicates that on December 10, 1971, Local 406 Business Agents Roger Groendyk and Will Kellogg delivered to the Employer a letter stating that a majority of the employees had designated Local 406 as their bargaining representative and demanding recognition and bargaining on that basis. Although the letter also stated Local 406 was willing to submit its authorization cards for checking by a neutral third party, there is no evidence that any cardcheck was ever conducted. On the same day, the Employer's counsel informed Union Secretary-Treasurer Kelley that the Employer desired an election. Kelley stated, however, he had no intention of having an election and that the Union intended to strike for voluntary recognition. On the following day, after several union business agents established a picket line at the plant and several employees did not report to work, the Employer signed a recognition agreement with Local 406. There had been only one meeting between the Employer and Local 406 by the time the Employer filed its petition, and no contract discussions were held during this meeting. No collective-bargaining agreement had been reached or signed at the time of the hearing.

On this record we find no merit in Local 406's contention that these petitions are barred by the recognition agreement. It is well settled that informal recognition granted a union will not constitute a bar to a petition where it does not affirmatively appear that the employer extended recognition in good faith on the basis of a previously demonstrated showing of majority.⁷ There is no such affirmative showing in the present instance. Although it appears that a majority of the employees did not report to work on December 11, there is nothing in the record to show that it was, in the circumstances, a manifestation of support of Local 406's claim for recognition. On these facts we are not satisfied that Local 406 affirmatively demon-

intervened in Case 7-RM-841 and treated Local 406 as having intervened in Case 7-RC-10603

⁵ The status of Local 406 was stipulated. Although Local 406 refused to stipulate to the status of the Independent, the evidence in the record shows the Independent is a labor organization within the meaning of the Act

⁶ See *Dale's Super Valu, Inc.*, 181 NLRB No. 98

⁷ See, e.g., *Josephine Furniture Company, Inc.*, 172 NLRB No. 22.

strated its majority before recognition was extended. Accordingly, we find the recognition agreement is not a bar to an election.

In view of the above, we find that there exists a question affecting commerce 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.

4. In accordance with the agreement of the parties,

⁸ The parties agree that warehouse employees classified as price markers are eligible to vote in an election in a unit of warehousemen and drivers if one is directed. The parties, however, are uncertain as to whether the unit description should specifically include "price markers" as a separate category or consider them as encompassed under the general term "warehousemen." Since the record clearly reveals that price markers work in the warehouse under the same general supervision and conditions of employment as other warehouse employees, their inclusion in a warehouse unit is appropriate. But to avoid future misunderstandings, we include them by name as a separate category.

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

we find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All warehousemen, drivers and price markers,⁸ excluding office clericals, salesmen, salesmen trainees, guards, and supervisors as defined in the Act.

[Direction of Election⁹ omitted from publication.]

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, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 7 within 7 days after 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.