

American Mailing Corporation and Bookbinders & Bindery Workers Union, Local 144, International Brotherhood of Bookbinders, AFL-CIO, Petitioner. Case 5-RC-7726

May 31, 1972

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS
FANNING, JENKINS, AND KENNEDY

On September 17, 1971, the Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found, *inter alia*, that the Petitioner is a "labor organization" within the meaning of Section 2(5) of the National Labor Relations Act, as amended. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision on the grounds that the Petitioner was not a qualified labor organization entitled to certification.¹

On October 14, 1971, the National Labor Relations Board, by telegraphic order, granted the Employer's request for review of the Regional Director's finding that the Petitioner is a qualified labor organization entitled to certification, otherwise denied the Request for Review, and stayed the election pending issuance of the Decision on Review. Shortly thereafter, the Board granted leave to the United States Equal Employment Opportunity Commission, hereinafter referred to as the EEOC, and the International Brotherhood of Bookbinders, AFL-CIO, hereinafter referred to as the International or Petitioner's International, to file *amicus curiae* briefs. Briefs were

¹ At the hearing, the Employer refused to stipulate that the Petitioner was a labor organization within the meaning of Sec 2(5) of the Act. Subsequently, in its Request for Review and its brief in support thereof, the Employer stated that it did not contend that the Petitioner was not a labor organization, rather, it contended, for reasons to be discussed hereinafter, that the Petitioner is not entitled to certification.

² The subsequent procedural history of this case before the Board is as follows:

On October 14, 1971, the EEOC requested leave to file an *amicus curiae* brief. On October 19, 1971, the Board granted the EEOC's request to file an *amicus curiae* brief.

On November 8, 1971, the Petitioner filed a Motion for Reconsideration of Grant of Request for Review. On November 9, 1971, the Employer and Petitioner filed briefs, and the EEOC filed an *amicus curiae* brief. On November 11, 1971, the International requested leave to file an *amicus curiae* brief, and the Board granted the International's request on November 12, 1971. On November 15, 1971, the EEOC requested leave to file an *amicus curiae* brief in opposition to the Petitioner's Motion for Reconsideration of Request for Review, and the EEOC filed an *amicus curiae* brief in opposition to the Petitioner's Motion for Reconsideration of Grant of Request for Review. On November 18, 1971, the Employer filed a brief in opposition to the Petitioner's Motion for Reconsideration of Grant of Request for Review. On November 22, 1971, the International filed an *amicus curiae* brief.

Finally, on December 3, 1971, the Petitioner filed its reply to the

thereafter submitted by the Employer, the Petitioner, the EEOC, and the International.²

The Board has considered the entire record in this case, including the briefs, with respect to the Regional Director's determination under review, and hereby affirms his Decision.

In its brief on review, the Employer argues that the Petitioner cannot be permitted to participate in a Board election because it is inherently incapable of meeting its responsibilities under a certification in view of what the Employer claims to be an institutional bias on the part of the International against female members and employees. In support of this claim the Employer relies on the *International's* governing document, the "Book of Laws," which it introduced at the hearing.³ This book of laws, the Employer says, establishes, *inter alia*, that journeywomen, junior women, and female apprentices are unreasonably distinguished from journeymen, junior men, and male apprentices; that segregated locals for males and females are permitted; that women members are precluded from performing certain work unless a journeyman is not available; and that sexually segregated seniority lists are provided for.

The EEOC advances substantially the same argument as the Employer, and further urges that the Board is not preempted from action by the jurisdiction of the EEOC under Title VII of the Civil Rights Act of 1964, over unlawful employment practices involving sex discrimination by a labor organization. It contends that the Board's refusal to assert jurisdiction would not serve the "public interest," but would encourage "defiance of the law of the land."⁴

At the outset it is noted that the issue of the disqualification of Petitioner was not raised at the hearing, but was presented for the first time in the Employer's brief to the Regional Director. As

Employer's brief, and the Employer filed its reply to the International's *amicus curiae* brief.

³ The "Book of Laws" consists of six parts: the constitution, the bylaws, the general laws, the convention laws, the ceremony and ritual rules, and a specimen agreement.

⁴ Expanding on its argument that the International engages in sex discrimination, the Employer further contends that a certification of the Petitioner as the exclusive bargaining representative of the Employer's employees would be contrary to the Board's decision in *Independent Metal Workers Union, Local 1 (Hughes Tool Co)*, 147 NLRB 1573, the provisions of 42 U.S.C. sec. 2000e-2(c) and (d), and 20 U.S.C. sec. 201, *et seq.*, various executive orders; and the due process clause of the fifth amendment of the United States Constitution.

In its brief the EEOC further argues that the Petitioner, "as an agent of the International, has violated its duty of fair representation." In commenting on the evidence introduced by the Employer, the EEOC states that the Employer has presented evidence which, *prima facie*, indicates that the International "retains or practices" a policy of sex discrimination which violates 42 U.S.C. sec. 2000e-2(c), 29 U.S.C. sec. 158(b)(1)(a), 29 U.S.C. sec. 150(d), and 29 U.S.C. sec. 159(a). In all other respects, the EEOC presents essentially the same arguments as the Employer.

In view of our ultimate disposition of this case, we find it unnecessary to reach or pass upon these further contentions presented by the Employer and the EEOC.

indicated above, the only evidence on that issue was the book of laws of Petitioner's International. Although the book of laws was put into the record by the Employer at the hearing without objection, the Employer did not then explain the purpose of this exhibit, although specifically requested to do so.⁵ Consequently, the Employer effectively precluded litigation of the meaning of the book of laws provisions upon which it now relies, and also the question of whether these provisions are binding upon the Petitioner, which is the only labor organization seeking certification in this proceeding.⁶

In these circumstances, we are unable to conclude that the record as made establishes that Petitioner has engaged in or is required to engage in sex discrimination. For this reason and apart from any other consideration, we conclude that Petitioner is

not disqualified from representing the employees in this unit.⁷

However, it is well established, as the Regional Director held, that certification of a union does not give it a license to engage in discriminatory practices. Accordingly, any certification which may eventuate as a result of this decision is subject to revocation upon a showing that the Petitioner has not complied with its statutory duties relative to equal representation of all employees in the unit.⁸

This case is hereby remanded to the Regional Director for Region 5 for the purpose of holding an election pursuant to the previous Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision.⁹

⁵ The book of laws was the Employer's Exh 2. Subsequent to its admission into evidence, the following colloquy occurred between Petitioner's counsel, Clark, and Employer's counsel, Keiler:

MR CLARK I would like to ask Mr Keiler a question, if I may

MR KEILER, would you care to inform either the Hearing Examiner or myself as to the purpose of introducing into evidence Employer's Exhibit No 1 and/or Employer's Exhibit No 2?

MR KEILER Well, as far as the Hearing Examiner is concerned, informing him is a waste of time

As far as you are concerned, you can read it in my brief

MR CLARK That is what I thought you would say

⁶ *Franklin Electric Co*, 121 NLRB 143, 146

⁷ We affirm the Regional Director's finding that the Petitioner is a labor organization within the meaning of Sec 2(5) of the Act. The record shows that Petitioner is an organization in which employees participate, and that the Petitioner exists for the purpose of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Co*, 136 NLRB 850, 851

⁸ *United States Baking Company, Inc*, 165 NLRB 951, 952

⁹ The Board hereby denies the Petitioner's Motion for Reconsideration of Grant of Request for Review