

Ridge Care, Inc. t/a Whitemarsh Nursing Center and Local 1199C, National Union of Hospital and Nursing Home Employees, Division of RWDSU, AFL-CIO, Petitioner. Case 4-RC-10236

March 27, 1974

### DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND  
PENELLO

On May 15, 1973, the Regional Director for Region 4 issued his Decision and Direction of Election in the above-entitled proceeding in which he found, in the circumstances of the case, that the recognition agreement between the Employer and the Intervenor was not a bar to an election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Intervenor filed timely requests for review of the Regional Director's Decision on the grounds that in concluding that their recognition agreement was inoperative as a bar he made findings of fact which are clearly erroneous and departed from officially reported precedent.

On June 6, 1973, the Board by telegraphic order granted the requests for review and stayed the election pending decision on review. Thereafter, the Employer filed a brief on review and requested oral argument.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's brief on review,<sup>1</sup> and makes the following findings:

The Employer and the Intervenor contend, *inter alia*, that the Regional Director's failure to accord bar quality to their recognition agreement is in conflict with the principle of *Keller Plastics Eastern, Inc.*, 157 NLRB 583. We agree.

The record shows that the Intervenor began organizing the Employer's employees in May 1972. On January 15, 1973, the Intervenor notified the Employer that it represented a majority of the employees involved and wished to negotiate an agreement. On January 22, the Employer wrote the Intervenor that recognition would be granted only if the Intervenor went through proper channels to establish its majority representative status. Thereafter, the Employer and the Intervenor agreed upon a

cross-check verification of authorization cards by the American Arbitration Association, herein referred to as the AAA. On March 2, an arbitrator checked the Intervenor's cards against a current payroll list of employees in the agreed-upon unit, together with the employee signatures on the cards, and found that the Intervenor presented 48 valid cards among the 91 eligible employees and was the majority representative for the purposes of collective bargaining. The Employer thereupon recognized Intervenor as bargaining agent and scheduled a bargaining session for 10 a.m. on Thursday, March 8. On Monday, March 5, the AAA certified the cross-check and the Intervenor's majority status.

On March 6, by telegram to the Employer, the Petitioner claimed it represented a majority of the employees and demanded recognition, offering to demonstrate its status to the Employer or any impartial persons agreeable to the parties. On March 7, by telegram to the Petitioner, the Employer summarized the facts set forth above, asserted its affirmative duty to bargain with the Intervenor as the duly established representative chosen by a majority of its employees and its intent to meet with the Intervenor to discuss a collective-bargaining agreement. The Employer mailed the Petitioner a copy of the AAA certification and requested that it adhere thereto or file an appropriate petition with the Board.

On March 8, the first bargaining session between the Employer and the Intervenor terminated without an agreement, as the Intervenor would not accede to the Employer's request for indemnity in view of its information that a rival petition would be filed with the Board. The instant petition was filed the same day.

There is no evidence that either the Employer or the Intervenor was aware of any interest the Petitioner may have had in representing unit employees at the time of the AAA-conducted check of the Intervenor's card support on March 2. It would thus appear that the Employer's agreement to recognize the Intervenor on the basis of such card check was required by the Act, since there is little, if any, showing the Employer had reasonable grounds for believing that a competing union was supported by any of the employees. An organizer for the Petitioner testified that he first distributed leaflets on February 23 and solicited authorization card signatures for the Petitioner on February 25. Although he said he had received signed cards "in the earlier part of March and the latter part of February," he "couldn't really say" how many signed cards he had received. We conclude, in these circumstances, despite the adequa-

<sup>1</sup> The request for oral argument is denied as the record and briefs adequately present the issues and the positions of the parties. In view of our decision herein, we find it unnecessary to consider the other contentions of

the Employer and the Intervenor, Local 1034, Retail, Wholesale & Department Store Workers Union, AFL-CIO, Drug and Hospital Division.

cy of the Petitioner's showing of interest to support its petition, that its interest at the time of the Employer's recognition of the Intervenor was insufficient to impair the validity of the means used to demonstrate the Intervenor's majority status in the unit. Accordingly, applying the principle of *Keller Plastics* to the facts of the instant case,<sup>2</sup> we find that the Employer's recognition of the Intervenor operates as a bar to a petition until a reasonable period of

time for bargaining has expired and, as such period has not expired herein, we shall dismiss the instant petition.

#### ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

<sup>2</sup> Cf. *Rheingold Breweries, Inc.*, 162 NLRB 385, *Sound Contractors Association*, 162 NLRB 364, 365, *Superior Furniture Manufacturing Co., Inc.*,

167 NLRB 309; *Pineville Kraft Corporation*, 173 NLRB 863.