Mojave Electric Cooperative, Inc. *and* **International Brotherhood of Electrical Workers, Local Union 387, Petitioner.** Case 28–RC–2631

April 16, 1974

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On December 11, 1973, the Acting Regional Director for Region 28 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found in effect that the involved oral recognition was not a bar to the petition because it was not in writing, and that the subsequent written recognition agreement was not a bar because it was executed during the Petitioner's organizing campaign. 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 Acting Regional Director's Decision, together with a supporting brief, asserting *inter alia,* that he erred as a matter of law in concluding that a recognition agreement must be in writing to be a bar.

By telegram dated January 14, 1974, the National Labor Relations Board granted the request for review and stayed the election pending decision on review. Thereafter, the Employer and the Petitioner filed briefs 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 authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the briefs on review, and makes the following findings:

On August 5, 1965, the International Brotherhood of Electrical Workers, Local Union No. 769, AFL–CIO, herein called Local 769, was certified as the exclusive representative of employees of the Employer in a unit substantially the same as that in which Petitioner now seeks an election. The latest collective-bargaining agreement between Local 769 and the Employer expired on September 16, 1973.[1] At a meeting on July 30, however, the Employer's general manager was informed by a representative of the International Brotherhood of Electrical Workers, herein called the International, that the International was considering transferring jurisdiction over the certified unit from Local 769 to the Petitioner, its sister local.

On September 13, the Employer conducted a poll of its employees to determine whether Local 769 still represented a majority. By a vote of nine to seven, the employees indicated that they no longer wished to be represented by Local 769. After being informed of the results of the poll, Local 769 filed an unfair labor practice charge alleging that the Employer had refused to bargain with it in violation of Section 8(a)(5) of the Act.

On September 19 and 20, a group of employees formed the Mojave Electric Cooperative Employee Bargaining Committee, herein called the Intervenor, of which the Employer had knowledge on September 29. On October 17, pursuant to a demand by the Intervenor and after a showing that it represented a majority of the unit employees, the Employer orally recognized the Intervenor as exclusive bargaining agent.

On October 30, shortly after the Regional Director had dismissed the aforementioned unfair labor practice charge filed by Local 769,[2] the Employer, in effect, confirmed its prior oral commitment by executing with the Intervenor a document wherein the Employer agreed to recognize the Intervenor as the exclusive representative of the unit employees for the purpose of collective bargaining.

Meanwhile, on October 25, Petitioner held its first organizational meeting and between that date and October 30, the date of the written recognition agreement, the Petitioner was engaging in a general organizing campaign among the employees and had obtained a number of signed authorization cards.

It is settled doctrine that a recognition agreement will bar a petition provided such recognition has been granted "in good faith on the basis of a previously demonstrated showing of majority and at a time when only that union was actively engaged in organizing the unit employees."[3]

We agree with the Acting Regional Director that the October 30 written recognition agreement cannot be a bar as it was executed during the Petitioner's active organizing campaign. There remains for consideration the principal issue of whether the oral recognition agreement of October 17 constitutes a bar. Relying on Board policy that collective-bargaining agreements must be in writing in order to have bar quality, the Acting Regional Director was of the view that recognition agreements also had to be in writing in order to bar a petition. We disagree, for the same policy considerations requiring memorialization of collective-bargaining agreements are not applicable to recognition agreements.

However, we find for other reasons that the oral recognition here is not a bar to the petition. Thus, it appears that at the time recognition was extended the

[1] Except as otherwise noted, all dates herein are in 1973.

[2] This dismissal was based on the conclusion that Employer had a good-faith doubt concerning Local 769's majority status.

[3] *Sound Contractors Association,* 162 NLRB 364, 365.

Employer knew from its own poll that 7 of the 16 polled employees remained adherents of incumbent Local 769. Moreover, the Employer had been advised in July of the possibility that jurisdiction would be transferred to the Petitioner which did begin an active organizing campaign shortly after recognition was accorded. In these circumstances, we conclude that recognition was extended at a time when the Employer knew that another labor organization had substantial support among the unit employees. Accordingly, we find that oral recognition of the Intervenor does not bar the instant petition.

Accordingly, the case is hereby remanded to the Regional Director for Region 28 for the purpose of conducting an election in accordance with the Direction of Election except that the payroll period for eligibility shall be that immediately preceding the date of issuance.[4]

[4] 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 a revised 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 28 within 7 days of the date of this Decision on Review. 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.