

Ergens Grocery Corp., Employer-Petitioner and United Steelworkers of America, Local 15370, AFL-CIO-CLC;¹ **Retail Clerks Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO;**² **and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 590, AFL-CIO,**³ Case 6-RM-508

August 23, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Michael Joyce. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations of Procedure, Series 8, as amended, this case was transferred to the Board for decision. No briefs were filed.

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

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 organizations involved claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons:

The Steelworkers or its predecessor has been the collective-bargaining representative at the Employer's Imperial, Pennsylvania, food store for a number of years. There is currently a collective-bargaining agreement between the Steelworkers on behalf of its Local 15370 and the Employer which was entered into on July 10, 1973, effective from July 1, 1973, until June 30, 1976. The Steelworkers and Meatcutters al-

lege that this agreement is a bar to this proceeding. The Employer desires an election, as does the Retail Clerks, which contends that the contract is not a bar because of an alleged abandonment of the contract by Local 15370, and the assignment of the contract by Local 15370 to the Meatcutters. We find no merit in the Retail Clerks contentions.

In a letter dated December 20, 1973, the officers of Local 15370 informed the members that the officers agreed that the members' interests could best be served by affiliating with the Meatcutters. The members were notified that a secret-ballot vote would be taken at the next regular monthly meeting, January 8, 1974. On January 4, 1974,⁴ the Retail Clerks sent a letter to the Employer in which it claimed an interest in representing the employees. On January 7, the Employer filed the instant petition. On January 8, at the meeting of Local 15370, the members voted 34 to 2 to affiliate with the Meatcutters. In addition to employees at the Imperial store, employees from the Employer's Bridgeville and Carick stores were also present and voted in the affiliation vote.⁵ In a letter dated January 9, the officers of Local 15370 informed the Employer that the members voted to affiliate with the Meatcutters and requested the Employer to refer all communications to the Meatcutters. On January 11, the Meatcutters sent a letter to the Employer informing it of the affiliation change.

From the above, it is clear that on January 7, the date on which the Employer filed the instant petition, the only relevant action taken by Local 15370 was a recommendation by its officers that the members vote on January 8 for affiliation with the Meatcutters. In addition, Bernard M. Hostein, staff representative for the Steelworkers, testified that he attended the January 8 meeting and told the members that the Steelworkers were not letting anybody go, but that "we just wanted to know more or less how the people felt, how their ideas were on affiliating with [the Meatcutters]." He also told the members, "we are not abandoning them, we are servicing them." The record indicates that the Steelworkers have continued to service the contract. Victor Ergens testified that a representative of the Steelworkers visited the store and said that the Steelworkers still represents the employees.

In view of the foregoing, it is apparent that, despite the desire of a substantial part of the membership of Local 15370 to affiliate with the Meatcutters,⁶ the Steelworkers has not relinquished its rights under the

⁴ All dates hereinafter are 1974.

⁵ There are approximately 28 employees in the Imperial store unit. Of these, it was estimated that approximately six or seven attended the January 8 meeting. We note that the contract, which the Steelworkers and Meatcutters contend bars the petition, covers only the employees at the Imperial store.

⁶ We find it unnecessary to determine the appropriateness of the affiliation vote.

¹ Hereinafter called Local 15370. United Steelworkers of America, hereinafter called Steelworkers, intervened based on a current collective-bargaining agreement with the Employer on behalf of Local 15370.

² Hereinafter called Retail Clerks.

³ Hereinafter called Meatcutters.

contract as a signatory thereto. It has in all respects indicated its willingness to administer the contract.⁷ Furthermore, the Meatcutters has disclaimed any interest in representing the employees.

We are satisfied that the status of the Steelworkers as the effective and identifiable representative of the Employer's employees remains undisturbed and that no doubt exists among these employees as to the iden-

tity of the labor organization by which they desire to be represented. Accordingly, as the existing contract will not expire until June 30, 1976, we find that it is a bar to the present petition. We shall therefore dismiss the petition.⁸

ORDER

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

⁷ *Universal Moulded Products Corporation*, 118 NLRB 1277 (1957).

⁸ *The Youngstown Steel Door Company*, 116 NLRB 986 (1956).