

**Central Supply Company of Virginia, Inc., Employer-Petitioner and International Union, United Mine Workers of America. Case 5-RM-773**

April 30, 1975

**DECISION AND DIRECTION OF ELECTION**

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William M. Ashmore. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 5, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer-Petitioner and the Union filed briefs in support of their respective positions.

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 rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Central Supply Company of Virginia, Inc., herein called Employer-Petitioner, is engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. International Union, United Mine Workers of America, herein called the Union, is a labor organization claiming to represent certain employees of the Employer-Petitioner.

3. A question affecting commerce exists concerning the representation of employees of the Employer-Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer-Petitioner is a Virginia corporation engaged in the sale of mine and mill supplies, hardware, and building materials at its Andover, Virginia, facility. The Employer-Petitioner and the Union entered into a collective-bargaining agreement on March 1, 1972, which, by its terms, was to expire on March 1, 1975. At approximately 10 a.m. on Friday, December 27, 1974, the Employer-Petitioner sent by certified mail from Big Stone Gap, Virginia, to the Board's Regional Office in Baltimore, Maryland, a petition requesting that an election be held among its employees at the Employer's facility in Andover, Virginia. The petition was received by Region 5 at its offices in Baltimore, Maryland, on January 2, 1975. The Union contends that the petition should be dismissed as untimely. We disagree.

The Board established in *Deluxe Metal Furniture Company*, 121 NLRB 995, 1000 (1958), and reaffirmed in *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962), a 60-day "insulated period" immediately preceding and including the expiration date of an existing collective-bargaining agreement and said that a petition filed during this period would be dismissed as untimely. The date on which a petition is received by the Regional Office was fixed as controlling for purposes of determining its timeliness in relation to the 60-day "insulated period." The Board stated that all potential petitioners would be required to have their petitions on file at least 61 days before the terminal date of the contract.

The petition herein, although mailed 65 days prior to the March 1, 1975, expiration date of the collective-bargaining agreement, was not received by the Regional Office until 59 days prior to that date, or during the "insulated period." The postmaster of Big Stone Gap, Virginia, testified that, under normal circumstances, a letter from Big Stone Gap to Baltimore, Maryland, should take at the most 2 days to deliver. Mail that is posted on a given day is placed on an airplane at a local airport at approximately 5 p.m. It arrives in Baltimore at 1:30 a.m. the following morning and is ordinarily delivered that same day. Thus, under normal circumstances, the petition would have arrived in Baltimore on Saturday, December 28, 1974, and since the Board's offices are closed on Saturday and Sunday, it is reasonable to assume that the petition would have been received by the Regional Office on Monday, December 30, or, at the latest, on Tuesday, December 31, both dates falling outside the "insulated period."<sup>1</sup>

In *Rio de Oro Uranium Mines, Inc.*, 119 NLRB 153 (1957), the Board held that, where a party has filed objections to an election in a manner and at a time in which it would be reasonable to assume that in the normal operation of the United States mails the objections would be timely received at the Board's Regional Office, and the delay in receiving the objections appears not to be attributable to the sending party, it would be inequitable to penalize the sender for the delay.<sup>2</sup> The Board therefore considered the objections to be timely filed and it remanded the case to the Regional Director for investigation of the issues raised by the objections. We believe the same considerations and rationale are applicable under the circumstances of this case. Therefore, we find that it would be inequitable to penalize the

<sup>1</sup> The Board's offices were closed on Wednesday, January 1, 1975, due to the New Year's Day holiday.

<sup>2</sup> Also see *Employers' Association of Building Metal Fabricators, Rhode Island District*, 149 NLRB 382, 383-385 (1964), where the Board used a similar rationale regarding the mailed notice of intention to terminate a collective-bargaining agreement in compliance with the 60-day rule of Sec. 8(d)(1) of the Act.

Employer-Petitioner here, who mailed the petition under circumstances where it had the right to assume the petition would be timely received at the Board's Regional Office in the due course of the mails. Under the circumstances, we find that the petition herein has been timely filed.<sup>3</sup>

<sup>3</sup> In a letter filed with the Board on March 17, 1975, the Employer-Petitioner contends that, since the collective-bargaining agreement expired March 1, 1975, the question of the timeliness of the petition referred to the Board for decision is now moot and that the case should be remanded to the Regional Director for Region 5 for appropriate action. We find no merit in this contention. Cf. *Electric Boat Division, General Dynamics Corporation*, 158 NLRB 956 (1966)

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for collective bargaining within the meaning of Sec. 9(b) of the Act:

All warehousemen-truckdrivers employed by the Employer at its Andover, Virginia location, but excluding all other employees, all office clerical employees, guards and supervisors as defined by the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]