

Centennial Development Company and Laborers' District Council of the State of Arizona, AFL-CIO; and International Union of Operating Engineers, Local 428, AFL-CIO, Joint Petitioners. Cases 28-RC-2775 and 28-RC-2776

June 30, 1975

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

On September 10, 1974, the Regional Director for Region 28 issued a Decision and Order in the above-entitled proceeding in which he dismissed the petitions for two single project units of construction, production, and maintenance employees, finding them inappropriate for severance from an established employerwide unit represented by the Intervenor, United Steelworkers of America, AFL-CIO. He made no disposition of the Joint Petitioners' alternative request for an election in the existing employerwide unit, as he deemed the record inadequate. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Joint Petitioners filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that he erred in not ruling on their alternative unit request. The Employer filed opposition thereto. The Joint Petitioners filed a supplement to their request for review, and the Employer filed opposition to it and a motion to strike. Thereafter, the Regional Director decided to treat the request for review as a motion for reconsideration, and, on January 24, 1975, he issued a Supplemental Decision and Direction of Election, in which he found the alternatively requested unit to be appropriate and directed an election therein, on the basis of his determination that the Joint Petitioners had submitted a sufficient showing of interest therefor. Thereafter, the Employer and the Intervenor filed requests for review of the Regional Director's supplemental decision on the grounds, *inter alia*, that, in failing to find a contract bar to an election in the existing unit, he departed from precedent. The Joint Petitioners filed opposition to their requests for review.

By telegraphic order dated February 25, 1975, the Intervenor's and the Employer's requests for review were granted and the election stayed, pending decision 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 with respect to the issues under review and finds that 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 Employer and the Intervenor take the position that, because the existing employerwide unit is much larger and substantially different in character from the single project units which the Joint Petitioners originally petitioned for, it was incumbent on them, in support of their amended request for the existing unit, to submit an adequate showing of employee interest therefor. And they contend that, absent submission of a showing of interest for such an election prior to their execution of a new contract covering the existing unit, their contract operates as a bar to an election herein. We find merit in this contention.

The Employer, which is headquartered at Salt Lake City, Utah, is engaged in mine construction throughout the United States. Since 1947 the Intervenor has continuously represented all construction, production, and maintenance employees at its various project sites and at its fabrication shop in Eureka, Utah. At the time the Joint Petitioners filed the instant petitions on June 13, 1974, the Intervenor's contract covering an employerwide unit was scheduled to expire on August 31, 1974. In the course of the hearing held herein on August 7 and 8, during the insulated period of that contract, the Joint Petitioners for the first time indicated that, in the alternative, should their requested single project units be found inappropriate, they wished to represent the employees in the existing employerwide unit.

On September 13, 1974, 3 days after the Regional Director issued his decision finding the single project units inappropriate and dismissing the petitions, the Intervenor and the Employer executed a new contract, effective September 1, 1974, through August 31, 1977.¹ On October 1, the Joint Petitioners filed a new petition for an election in the employerwide unit. As above indicated, the Regional Director in his supplemental decision decided to treat the Joint Petitioners' request for review of his dismissal of their petitions as a motion for reconsideration, and he directed an election in the employerwide unit, finding the contract executed on September 13 not to be a bar. He so concluded for the stated reason that, if an election had been directed by him in his original decision, the Joint Petitioners would have been permitted a period of time following his decision to

¹ The Intervenor states that the Employer had agreed with it on August

22, 1974, to extend their current agreement, on an interim basis, to September 15, 1974.

submit a sufficient showing of interest to support the broader unit or to withdraw their petitions. And he went on to state that he had determined, administratively, that the showing of interest submitted by the Joint Petitioners in support of the instant petitions, as well as that submitted to support their new petition, was sufficient to warrant an election in the employerwide unit.

Contrary to the Regional Director, we find that the contract executed by the Intervenor and the Employer on September 13 bars an immediate election in the existing unit. Where a petitioner broadens its originally petitioned-for unit to one which is substantially larger and different in character, the broadened unit request is treated by the Board as tantamount to a new petition and as such must be supported by an adequate showing of interest timely submitted.² Clearly, the existing employerwide unit alternatively sought by the Joint Petitioners is basically different in character from their primarily requested single project units. In the circumstances, inasmuch as their primarily requested units were judged to be inappropriate, they could obtain an election in the existing

unit only if two conditions were met: first, the insulated period must have elapsed without execution of a new agreement to succeed the one which expired on August 31, 1974, and, second, a sufficient showing of interest to support an election in the existing unit must have been obtained before September 13, the date of execution of a new contract by the Intervenor and the Employer.³ While the first of these conditions was met, the second was not, as we are advised administratively that the Joint Petitioners did not obtain a sufficient interest showing until *after* the new contract covering the employerwide unit was executed.

Accordingly, as we have found that the Intervenor's new contract with the Employer bars an election in the existing unit, we shall dismiss the petitions herein.

ORDER

It is hereby ordered that the petitions filed in Cases 28-RC-2775 and 28-RC-2776 be, and they hereby are, dismissed.

² See *Deluxe Metal Furniture Company*, 121 NLRB 995, 1000 (1958), fn. 12, *Mallinckrodt Chemical Works*, 200 NLRB 1 (1972), *Polk Brothers Central Appliance and Furniture Company*, 105 NLRB 251 (1953); *Hyster Company*, 72 NLRB 937 (1947) The cases of *Rappahannock Sportswear Co.*,

Inc., 163 NLRB 703 (1967), and *Manheim Division of Raybestos Manhattan, Inc.*, 202 NLRB 97 (1973), relied on by the Regional Director, are thus clearly inapposite.

³ See *Mallinckrodt Chemical Works*, *supra*.