

Southern Moldings, Inc.¹ and Edgar H. Smith and Norma Conway Herger, Petitioners and International Union of Allied Industrial Workers of America, AFL-CIO, and its Local 208, Allied Industrial Workers of America.² Case 9-RD-661

July 14, 1975

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Felix C. Wade on March 4, 1975.³ Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Petitioners, the Employer, and the Union filed briefs.

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 case,⁴ including briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioners, employees of the Employer, assert that the Union, a labor organization, is no longer the representative, as defined in Section 9(a), of the employees designated in the petition.

3. The Petitioners seek to decertify the Union as the representative of the employees in the unit described *infra*. The Union contends that the Employer is a successor and that recognition granted to it by the Employer on October 21 operates as a bar to this proceeding. We find no merit in this contention.

The record discloses that the H. K. Porter Co., the Employer's alleged predecessor, was engaged in the production of coldform metal products for several corporate customers. Porter had a collective-bargaining agreement with the Union, which was effective through August 12, 1976. However, on September 16, Porter ceased operations. The Employer commenced its operations on September 17. It produces automotive components, a product similar to one of the numerous products manufactured by Porter. Its only customer is Chrysler, which is one of Porter's several former customers. To produce the components, Southern Moldings uses a portion of Porter's former facility, former equipment, and former work force.

On September 21 the Union wrote to the Employer and demanded recognition asserting that the Employer's obligation to bargain with it was governed by successor-employer concepts.⁵ The Employer refused to acknowledge or concede that it had successor-employer obligations, but stated that it would nevertheless recognize the Union because, considering the similarity between the old operation and the new, the Union was "the only properly accredited bargaining representative. . . ." It refused, however, to assume the collective-bargaining agreement. No negotiations had been held when the instant decertification petition, supported by an adequate showing of interest, was filed.

The Union argues that the Employer is a successor and that under *Burns, supra*, the Union is therefore entitled to a presumption of continuing majority status. Assuming, without deciding, that the Employer is a successor, the Union would of course be entitled to a rebuttable presumption of continuing majority status as the representative of the successor's employees. In such circumstances, the successor in effect stands in the shoes of its predecessor vis-a-vis the Union (sans an existing contract). Clearly, in a successor situation, a union is not entitled to greater rights with respect to a successor than it had with a predecessor; and it may even have less since a successor is not required to accept a predecessor's union contract which would, had the predecessor continued the operation, have acted in the case of the latter party as a bar. Thus, whereas here, there is no effective contract to act as a bar,⁶ such presumption can-

⁵ *N.L.R.B. v. Burns International Security Service, Inc.*, 406 U.S. 272 (1972).

⁶ As noted *supra*, the Employer declined to assume Porter's contract with

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¹ The Employer's name appears as amended at the hearing

² The Union's name appears as amended at the hearing

³ All dates hereinafter refer to 1974 unless specified otherwise.

⁴ The Union requested, by motion filed on March 28, 1975, that we admit into evidence in this case a letter from the General Counsel to the Union dated March 21, 1975, informing the Union that ruling on its motion for reconsideration in Case 9-CA-8991 would be deferred pending the Board's decision in the instant case. As the letter is irrelevant to the issues in this case, the Union's motion is denied.

By separate motion filed May 8, 1975, the Union requested the Board to accept into evidence a proposed settlement agreement arising out of a charge filed by the Union in Case 9-CA-9198, and the correspondence between it and the Regional Office relating thereto. We hereby grant the Union's motion and take official notice of these documents. The disposition of Case 9-CA-9198 does not affect the substantive issues in this case, but inasmuch as the election herein might coincide with the period for the posting of the notice, we shall direct the Regional Director to conduct the election at a time when, in his discretion, the alleged violation has been adequately remedied.

not operate to bar a timely filed decertification petition raising a question concerning representation anymore than it would preclude the Board from processing a petition for representation filed by another union.⁷ Nor do we find merit in the Union's argument that this petition is barred under the *Keller Plastics* rule (157 NLRB 583 (1966)). That rule relates to the initial organization of an employer's employees and does not apply where, as here, an alleged successor-employer has continued to accept an incumbent union as the representative of its employees.

Accordingly, as we have already found that the

the Union. The Employer, even if it was a successor, was under no legal obligation to assume the contract. *Burns, supra*.

⁷ Cf. *Telautograph Corp.*, 199 NLRB 892 (1972). Member Fanning finds it unnecessary to rely on *Telautograph*.

recognition accorded the Union does not bar the petition, and there being no other impediment to the filing of the instant petition, we find that it raises a question concerning representation that can best be resolved by an election. We shall therefore direct that a decertification election be held at the Employer's Frankfort, Kentucky, plant in the following appropriate unit:

All production and maintenance employees employed at the Employer's Frankfort, Kentucky, plant excluding all office clerical employees, guards, registered nurses, licensed practical nurses, over-the-road drivers, professional employees, and supervisors as defined in the Act.

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