General Bronze Architectural Products, a Division of Allied Products Corporation *and* Raul Mazo, Petitioner and Shopmen's Local Union No. 698, of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO. Case 12–RD–316

September 24, 1975

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

On March 13, 1975, the Regional Director for Region 12 issued a Decision and Direction of Election in the above-entitled proceeding, finding, *inter alia,* that certain laid-off employees were ineligible to vote in the election, and that a committee of four employees, which he designated as the Employee Committee and which sought to intervene and appear on the ballot, was not a labor organization. Thereafter, in accord with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the grounds that in reaching the above conclusions he departed from officially reported precedent and made findings of fact which are clearly erroneous.

By telegraphic order dated April 22, 1975, the National Labor Relations Board granted the request for review and stayed the election 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 makes the following findings:

As stated, an Employee Committee, comprised of four Spanish-speaking employees, including the Petitioner, sought to intervene and appear on the ballot. The Regional Director found the Employee Committee not to be a labor organization, in accord with positions of the Employer and the Union, stating only that record testimony does not establish that it meets the statutory definition of a labor organization.[1]

The record contains testimony by the Petitioner that the Employee Committee represents a large majority of employees, that it wishes "to reach an agreement" with the Employer, that it represents all employees regardless of race, and that it intends to handle any problems in negotiation and resolution of grievances with the aid of outside counsel. From this testimony it is clear that the Employee Committee "exists for the purpose . . . of dealing with employers" concerning grievances and negotiation of working conditions. Contrary to the Regional Director, we find that the Employee Committee is a labor organization within the meaning of the Act and may therefore intervene and appear on the ballot herein.

As indicated, the Petitioner also contends that the Regional Director erred in finding all laid-off employees to be ineligible to vote.

As found by the Regional Director, the Employer is engaged in the manufacture of custom-ordered architectural metal products; thus there is no inventory and its business depends on the health of the construction industry. With recent cutbacks in the construction industry, there has been a severe decrease in employment at the Employer's plant as current contracts are completed and new orders not obtained. The Employer's work force ranged from a low of 71 in March 1974 to a high of 105 in August 1974. During the last months of 1974 there were substantial layoffs reducing the force to 49 employees in January 1975.

The record reveals 12 layoffs in January and 9 in February 1975, leaving only 28 employees as of the hearing date, February 28, 1975. Although the Employer has not received any new contracts, it is constantly submitting bids. However, after the winning of a contract and before production starts, there is usually a timelag of 16 to 24 weeks. The current collective-bargaining contract provides that laid-off employees retain their seniority for 12 months from the date of layoff. A witness for the Employer testified that the possibility of recalling more than 12 employees is quite remote and that the 12 included 8 people laid off on February 28, 1975, and 4 laid off in January 1975.

We agree with the Regional Director that the employees laid off prior to January 1975 have no reasonable expectancy of recall in the foreseeable future. However, as the above-referred-to uncontroverted testimony indicates that it is possible that 12 employees laid off in January and February 1975 may be recalled by the Employer, without specifications as to which of the total number laid off in that period might be selected for recall, we shall permit all the employees laid off in 1975 to vote under challenge.

[1] Sec. 2(5) of the Act provides, "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Accordingly, we shall remand the case to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein,[2] except that the payroll period for determining eligibility shall be that immediately preceding the issuance date of this Decision. [*Excelsior* footnote omitted from publication.]

[2] The unit which the Regional Director found to be appropriate is described as follows:

All production and maintenance employees engaged in the fabrication of iron, steel, metal and other products or in maintenance work in or about the Employer's plant in Medley, Florida, including local truck drivers; excluding all office clerical employees, clerical employees, inspectors, stock clerks, professional employees, over-the-road truckdrivers, warehousemen, watchmen, guards and supervisors as defined in the Act.