Rockwell International Corporation *and* F. Scott McCann and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. Case 6–RD–495

October 14, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, 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 Michael C. Joyce. After the hearing, the Regional Director for Region 6 transferred this case to the Board for decision. Thereafter, the 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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

1. The parties stipulated and we find that 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 parties stipulated and we find that the Union is a labor organization within the meaning of the Act.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union, after an organizing campaign, notified the Employer by letter of December 4, 1974, that it represented a majority of the Employer's production and maintenance employees and requested recognition. After evaluating its alternatives [1] the Employer responded by letter of January 2, 1975, to the Union's demand as follows:

> In response to your contention . . . the Company would be willing to allow a mutually agreed upon third party to determine the validity of the signatures . . . against [Company] signatures . . . . should such third party's examination result in a verification that the UAW does in fact represent a majority . . . the Company would then extend recognition . . . .

The Union and Employer thereafter agreed that an independent third party, Sherman K. Levine, Esquire, would conduct a card check and determine the Union's representative status by comparing employee signatures on authorization cards to those on insurance forms signed by the employees. Pursuant to said agreement, on February 11, 1975, the Employer, the Union, and Attorney Levine agreed the unit was composed of 114 employees and the Union and Employer, respectively, submitted the authorization cards and insurance forms to Levine. On February 11 and 12 Levine made the signature comparisons and early on February 12 determined that the Union in fact represented a majority of the employees on the basis of the submitted cards.[2] The Employer received Levine's letter indicating that on the basis of his card check the Union represented a majority of its employees on February 14, 1975.

In the meantime, on February 12, the day Attorney Levine completed the card check, the Employer received a document containing the signatures of 77 employees which reads as follows:

> We the undersigned feel we were misinformed. We were lead to believe we would have the right to vote for the Union or not. Therefore we feel we should have an inplant vote.

On February 19, 1975, in accordance with its agreement with the Union, Davis, the Employer's assistant director of labor relations, visited the Linesville facility, read Attorney Levine's letter to the assembled employees, and informed them that the Employer had recognized the Union.

Thereafter, on February 22, 1975, the Union held a meeting which was attended by approximately 90 unit employees, during the course of which the employees elected a three-member negotiating committee. Since February 22 the Employer and the Union's negotiating committee have met on three occasions for "contract negotiations"; at the time of the hearing no collective-bargaining agreement had been reached.

On February 26, 1975, the instant decertification

[1] According to Charles R. Venell, the Employer's director of labor relations based in Detroit, the Employer knew it could recognize the Union, have a card check by a neutral party, or go to an election. After careful consideration the Employer decided to determine if the Union had a majority by means of a card check conducted by an independent third party because business was not good at the Linesville plant and it wanted to avoid the possible disruptive effect of an election.

[2] The union authorization cards read in pertinent part as follows.

> I ——— authorize UAW to represent me in collective bargaining

The reverse side reads in pertinent part: "This card will be used to secure recognition and collective bargaining for the purpose of negotiating wages, hours and working conditions."

petition was filed, accompanied by the employee petition of February 12, 1975.

The Petitioner contends the only issue involved is the constitutional right of every American citizen to vote. The Union contends that, following a lawful grant of recognition, a labor organization is entitled to a reasonable period of time in which to attempt to negotiate a collective-bargaining agreement and that therefore the decertification petition is untimely and should be dismissed. At the hearing the Employer contended that pursuant to its agreement with the Union it validly recognized the Union in good faith, and that the decertification petition filed after such recognition is untimely.

We agree with the Employer and the Union that in the circumstances of this case the Employer lawfully recognized the Union and the petition should therefore be dismissed.

The Employer, when faced with the Union's demand for recognition, had, as it contends, three choices: (1) recognize the Union if it produced a card majority; (2) agree to a more formal card check before a neutral third party to determine if the Union had majority status; or (3) insist upon an NLRB election. In light of the economic conditions at Linesville it decided on the second alternative to avoid the possibly disruptive effect of an election. Its choice of a card check was not only reasonable but one long accepted and sanctioned by the Board.[3]

The Employer agreed that, if the card check demonstrated the Union had a majority, it would recognize the Union. The authorization card used by the Union is clear and unambiguous on its face; it authorizes representation. There is no question with regard to Attorney Levine's neutrality. The Employer and the Union went into the card check without any knowledge that the employees would later request a vote. There is, in short, no evidence whatsoever that the Employer or the Union acted in other than good faith.

The employee petition was not left with the Employer until after the agreed-upon card check had, in effect, been completed. In fact, the employee petition did not say the employees had changed their minds and did not want the Union, but only that they wanted a vote. Moreover, the decertification petition was not filed until recognition had been granted, the Union had held a meeting attended by 90 employees who had elected an employee bargaining committee, and collective-bargaining negotiations had begun.

In conclusion, pursuant to its agreement, the Employer validly recognized the Union after a neutral third party determined the Union had majority status. The Petitioner does not contend, nor does it advance facts to suggest, that recognition of the Union was not in good faith, or that the Union did not represent a valid majority of the employees in the unit.

Following a lawful grant of recognition the parties are entitled to a reasonable period of time to permit them to attempt to negotiate a collective-bargaining agreement; during that period a decertification petition is not timely.[4] The Employer, pursuant to its agreement, in effect recognized the Union when the card check was completed. The decertification petition was filed approximately 2 weeks thereafter. We conclude that the 2 weeks which elapsed between these events was not a reasonable period. Accordingly, we shall dismiss the petition.

ORDER

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

[3] In fact, the Board and the courts have long recognized that an employer may voluntarily recognize a union on the basis of authorization cards without a card check by a neutral third party.

[4] *Montgomery Ward & Company, Inc*, 162 NLRB 294 (1966); *Timbalier Towing Company, Inc*, 208 NLRB 613 (1974); *Keller Plastics Eastern, Inc*, 157 NLRB 583 (1966).