**United Service Company d/b/a A–1 Linen Service**[1] ***and*** **Local 379, Retail, Wholesale and Department Store Union, AFL–CIO, Petitioner.** Case 9–RC–11474

January 25, 1977

## DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS JENKINS, PENELLO, AND WALTHER

On June 1, 1976, the Regional Director for Region 9 issued a Decision and Order in the above-entitled proceeding, in which he dismissed the petition herein, finding the petition to be untimely as it was filed during the 60-day period immediately preceding and including the expiration date of the then-existing collective-bargaining agreement between the Employer and Intervenor.[2] Thereafter, in accordance 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, contending that the existing contract between the Employer and the Intervenor does not serve as a bar to the instant petition.

By telegraphic order dated July 6, 1976, the National Labor Relations Board granted the request for review. Thereafter, the Petitioner filed a timely brief 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 duly considered the entire record in this case with respect to the issues under review including the Petitioner's brief on review and makes the following findings of fact:

The petition herein was filed on April 8, 1976, seeking a unit of route salesmen employed by the Employer at its Columbus, Ohio, plant. The Regional Director dismissed the petition as untimely, finding that it was filed during the 60-day period immediately preceding and including the expiration date of a then-existing collective-bargaining agreement between the Employer and the Intervenor, effective from May 3, 1973, to May 3, 1976. He also found, contrary to the Petitioner's assertion, that the existing contract was not a "members only" agreement.[3]

In its request for review, the Petitioner has contended that the collective-bargaining agreement in effect when its petition was filed is not a bar to an election because: (1) the parties' agreement was executed prior to a substantial increase in personnel, citing *General Extrusion Company, Inc.,* 121 NLRB 1165 (1958); (2) the Employer and Intervenor enforced the collective-bargaining agreement as a "members only agreement"; and (3) the collective-bargaining agreement contained an unlawful union-security provision. We find merit in the Petitioner's argument that there is no contract bar under the principles set out in *General Extrusion, supra;* accordingly, we shall direct an election in the petitioned-for unit.[4] However, in view of our findings herein, we do not pass on the Petitioner's alternative arguments for not finding the contract to be a bar.

The Employer, an Ohio corporation, is engaged in the operation of a linen cleaning service. The Employer maintains two processing plants in Youngstown and Cincinnati, Ohio, and a truck terminal in Columbus, Ohio, the facility involved herein.

Sometime in March 1976, the Employer began discussion regarding the purchase of some additional linen routes owned by Atlas Linen Company. On April 5, 1976, a purchase agreement was signed between the Employer and Atlas for the acquisition of 7 or 8 routes, consisting of approximately 1,000 customers. The purchase constituted approximately 20 percent of Atlas' business.

Prior to this acquisition, the Employer interviewed and hired 10 Atlas routemen, enough routemen to service the new routes. These 10 routemen who commenced their employment with the Employer on April 5, 1976, were represented at Atlas by the Petitioner. At the time of the acquisition of the new routes, the Employer employed four routemen who serviced accounts in Columbus. These four routemen were represented by the Intervenor. The Employer did not add any new job classifications with the acquisition of the new routes. However, the number of employees increased from 4 to 14 and its volume of business tripled. All employees performed the same job function, delivery of linen to customers.

The Employer and Intervenor commenced negotiations for a new collective-bargaining agreement sometime in February 1976.[5] On April 6, 1976, the Petitioner made a demand on the Employer to recognize it as the exclusive collective-bargaining representative of its routemen. Thereafter, on April 8, 1976, the instant petition was filed. The record

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

[2] Teamsters Union, Local 413, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Intervenor, was permitted to intervene on the basis of its current contractual interest.

[3] The Employer and the Intervenor, on May 3, 1976, signed a new contract, effective from May 4, 1976, to May 3, 1979

[4] The parties stipulated that the appropriate unit consisted of all routemen employed by the Employer at its Columbus, Ohio, plant

[5] As noted above, the then existing collective-bargaining agreement was effective from May 3, 1973, to May 3, 1976

evidence shows that the Employer and Intervenor had engaged in approximately three negotiating sessions by April 8, 1976. Agreement on the terms and conditions of the new collective-bargaining agreement was not reached until April 21, 1976. As noted, the agreement was executed on May 3, 1976, effective from May 4, 1976, to May 3, 1979. Although the Employer and Intervenor did not discuss the wages and working conditions of the new employees, the terms of the new collective-bargaining agreement are applicable to all employees.

In *General Extrusion, supra,* the Board stated, "a contract does not bar an election if executed (1) before any employees had been hired or (2) prior to a substantial increase in personnel. When the question of a substantial increase in personnal is in issue, a contract will bar an election only if at least 30 percent of the complement employed at the time of the hearing had been employed at the time the contract was executed, *and* 50 percent of the job classifications in existence at the time of the hearing were in existence at the time the contract was executed."[6] On April 5, 1976, the Employer acquired 7 or 8 new linen routes and hired 10 new employees. While this resulted in no new job classifications, the number of employees increased from 4 to 14 and the Employer's business tripled. Indeed, under 29 percent of the work complement employed at the time of the hearing had been employed at the time the collective-bargaining agreement was executed in 1973. Accordingly, pursuant to the rules established by the Board in *General Extrusion, supra,* we find that the Employer's work force underwent so substantial an expansion subsequent to the execution of the old collective-bargaining agreement that the contract could not serve as a bar to an election. The new contract is not a bar because it was executed after the petition for an election had been filed when the Employer knew that another union (Petitioner) was seeking representation of its employees.

Accordingly, we find that an election should be directed in the following unit to determine whether the employees of United Service Company d/b/a A–1 Linen Service wish to be represented by Local 379, Retail, Wholesale and Department Store Union, AFL–CIO, or whether they wish to be represented by Teamsters Union, Local 413, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by neither union:

> All routemen employed by the Employer at its Columbus, Ohio, facility but excluding all other employees, including office clericals, guards and supervisors as defined in the Act.

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

[6] 121 NLRB at 1167 (1958)