Vermont Labor Relations Board

PLANT UNION, Petitioner	]	
- and -	]	DOCKET #77-53R
BENNINGTON POTTERS, INC., Employer	]	

ORDER

Statement of the Case.

The above captioned matter came on for hearing on the Petition for Election of Collective Bargaining Representative filed by Mary J. Sears, representative of the Plant Union at the Bennington Potters, Inc. plant in Bennington, Vermont, and for decertification of the International Ladies Garment Workers Union. The petition was filed under 21 V.S.A., § 1581, together with authorizations signed by twenty (20) employees, said to be fifty (50%) percent of the appropriate bargaining unit requested. Copy of the petition was sent by Certified Mail, Return Receipt Requested, to David Gil, President, Bennington Potters, Inc. and to the International Ladies Garment Workers Union. The appearance of John H. Williams, II, Esquire, for Bennington Potters was noted, and eventually the appearance of Angoff, Goldman, Manning, Pyle & Wanger, Esquires, for the International Ladies Garment Workers Union was noted. On 22 July 1977 a hearing was held in the Bennington County Courthouse, the Jury Room. Mrs. Mary J. Sears appeared for the petitioner, John H. Williams, II, Esquire for the Employer, and John F. McMahon, Esquire for the ILGWU. On 23 July 1977 a Motion to Dismiss the Petition was filed by the ILGWU.

Statement of the Evidence.

The only witness was Mary J. Sears, of Herman Road, Bennington, Vermont, Acting President of the petitioner. She stated that the ILGWU representative, Helen Fredette, could never come down to talk with the workers, or she would agree to come down and then "cancel out". There was no insurance for the employees and no answers to their questions. She stated that Mrs. Fredette was the Business Agent for the Local of ILGWU. She said that Thompson Manufacturing, a nearby concern, is also served by ILGWU and gets good service from Mrs. Fredette. She stated that in January of 1977 the Union had bargained for a raise of fifteen cents an hour, retroactive to September 1976, but that the raise was not in effect as yet. Mrs. Sears stated that twenty-six persons were presently in the Local out of a total of forty employees. She stated that she had also contacted Ralph Williams, of Rutland, Vermont, representative of the United Steel Workers of America.

There were no further witnesses and there was no further evidence.

Unfortunately, because neither of the other parties presented any evidence, the Board does not formally have before it evidence that could be construed to support the motion of ILGWU. However, from the file, and from the contact made by this Board with the National Labor Relations Board, certain information has been gathered from which it is possible to make the following findings.

Findings of Fact.

1. That Plant Union is a Local Union organized and existing at the plant in Bennington, Vermont of Bennington Potters, Inc.

2. That not less than thirty percent of the appropriate bargaining unit has filed authorization of interest within the meaning of the statute.

3. That there are forty employees in the proposed appropriate bargaining unit.

4. That the International Ladies Garment Workers Union, AFL-CIO, CLC, has been certified by the National Labor Relations Board as the collective bargaining representative for the appropriate bargaining unit at the Bennington Potters, Inc. plant in Bennington, Vermont.

5. That Bennington Potters, Inc. is engaged in interstate commerce and is in the manufacture, sale and distribution of pottery and other manufactured and purchased goods.

6. That the gross annual business of Bennington Potters, Inc. exceeds $500,000.00.

7. That the National Labor Relations Board has not declined to take jurisdiction over the employees at Bennington Potters, Inc. nor has it waived its jurisdiction.

8. The transcript and files are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law and Opinion.

It seemed to the Board fairly obvious at the outset that unless the International Ladies Garment Workers Union declined to contest the petition, and no question was raised by any party as to the jurisdiction of the National Labor Relations Board, that the Board would be required as a matter of law to dismiss the petition for lack of jurisdiction. Neither of these events occurred, but the parties did not place on the record very much information. The facts which have been found by this Board are not strictly facts derived from the evidence and exhibits taken at the time of hearing. While this is regrettable, the Board will not hesitate under the present circumstances to grant the Motion filed

by the International Ladies Garment Workers Union.

It seems quite clear that the Employer is engaged in interstate commerce within the meaning of 29 United States Code, Section 152 (7). 29 United States Code, Sections 151, et seq. would appear to contain an ample grant of jurisdiction to the National Labor Relations Board unless it was declined or unless the gross annual business of the Employer was less than $500,000.00 in the corporation's fiscal year 1976. While the State has jurisdiction if declined or waived by the National Labor Relations Board, the certification of the ILGWU, while not a matter of formal record, it is obvious and appears to indicate that the National Labor Relations Board has not declined to take jurisdiction. Local #20, Teamsters, Chauffeurs & Helpers Union v. Lester Morton, 377 U.S. 252, 84 S. Ct. 1253, 1257 (1964), the case relied upon by petitionee ILGWU. In this matter the Supreme Court, speaking through Mr. Justice White, held that persuasion of employees of a competitor of the struck trucking firm to refrain from doing business with such firm was a violation of the National Labor Relations Act. Considering the next question, whether persuasion of the competitor itself, not through its employees, was a factual situation covered by federal law, the Court held that it was not, but that the judgment of the court below ought to be upheld under principles of common law, saying, "... in a case such as this, incompatible doctrines of local law must give way to principles of federal labor law." The National Labor Relations Board actually has broad jurisdiction over all "labor disputes... affecting interstate commerce", but it does not act in all such cases. The Board has in practice limited its exercise of power to cases involving enterprises whose effects on commerce is substantial. National Labor Relations Board v. Denver Building & Construction Trades Council, 341 U.S. 675, 71 S. Ct. 943 (1951). This self-imposed restriction on the Board's jurisdiction has

been upheld by the Supreme Court except in a few cases where the refusal of jurisdiction was considered arbitrary. Whether the standards of retention of jurisdiction over labor disputes as gauged by the flow of the interstate commerce test would have been met here appears to be academic, in view of the fact that the National Labor Relations Board has indeed taken jurisdiction over this case in previous proceedings. See Hollow Tree Lumber Co., 91 NLRB 635, 26 LRRM 1543 (1950). In fact, the Board has sometimes pre-empted matters involving unfair labor practices even where they do not meet the self-imposed standards of the Board. Garner v. Teamsters, Local #776, 346 U.S. 485, 74 S. Ct. 161 (1953). The Garner Case spells out a fully developed rationale for the primary jurisdiction of the National Labor Relations Board. It was a case involving peaceful picketing for the purposes of coercing employees into compelling or influencing their employees to join a union. The Pennsylvania trial court found that the union's activities violated the State Labor Relations Act, and issued an injunction. This injunction was reversed by the Pennsylvania Supreme Court and the reversal affirmed by the United States Supreme Court. Mr. Justice Jackson wrote:

> "The National Labor Management Relations Act, as we have before pointed out, leaves much to the states, although Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible."

Such cases as might involve "injurious conduct", "mass picketing" and similar activities are still controlled by the states. With the scant evidence before this Board, we must nevertheless conclude that the Bennington Potters, Inc. employees are under the jurisdiction of the National Labor Relations Board, which has acted previously in their

interests.

Order.

In consideration of the findings of fact, and the discussion of basic principles of the jurisdictional facts involved, the Board is compelled to grant the Motion of ILGWU to dismiss. Therefore, the Petition of the Plant Union shall be, and it hereby is, DISMISSED.

Dated at Montpelier, Vermont this 23rd day of June, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By _____
JOHN S. BURGESS, CHAIRMAN

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WILLIAM G. KEMSLEY, SR.

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ROBERT H. BROWN