

King Manor Care Center and Healthcare Services Group, Inc. and 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, Petitioner. Case 22-RC-9913

May 22, 1991

DECISION DENYING MOTION FOR
RECONSIDERATION

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT, DEVANEY, OVIATT, AND
RAUDABAUGH

By Order dated August 24, 1990, the Board denied the Joint Employers' and Intervenor Local 6, International Union of Industrial, Service, Transport and Health Employees' requests for review of the Regional Director's Supplemental Decision and Direction of Election.¹ On September 7, 1990, the Joint Employers filed a motion for reconsideration. We deny the motion for reconsideration on the ground that it is lacking in merit.²

MEMBER CRACRAFT, dissenting.

In accord with my dissent in *Rollins Transportation System*, 296 NLRB 793 (1989), I would grant the Joint Employers' motion.

MEMBER DEVANEY, dissenting.

I disagree with my colleagues' denial of the Joint Employers' motion for reconsideration as lacking in merit. Consistent with Member Cracraft's dissenting opinion in *Rollins Transportation System*, 296 NLRB 793 (1989), I believe that the recognition agreements between the Joint Employers and Intervenor should bar the petition for a reasonable period of time.

The Intervenor represented to Employer King Manor that it had a majority on January 20, 1988.¹ An impartial arbitrator conducted a card check and ascertained that the Intervenor had 7 cards out of 13 possible unit employees. On that basis, the Intervenor was recognized by King Manor on January 29.

Intervenor then met with Employer Healthcare after determining that it employed some individuals at the King Manor facility and demonstrated its majority with respect to those employees on February 12. Employer Healthcare confirmed in writing its recognition of the

¹ Review was denied as there was a lack of majority to grant review. Chairman Stephens and Member Oviatt would deny review. Members Cracraft and Devaney would grant review. Member Raudabaugh was not a member of the Board at the time of the Order.

² In light of our dissenting colleagues' opinions, we have attached the relevant portions of the Regional Director's supplemental decision.

Member Raudabaugh agrees that the recognition of Intervenor would not bar the Petitioner's petition. Member Raudabaugh notes that both Unions were actively organizing at the time of the recognition. He also notes that Petitioner's petition was filed only 4 days after Employer Healthcare extended recognition to the Intervenor. Member Raudabaugh does not pass on whether the same result would be reached in a case where a longer period elapses between recognition and petition.

¹ All dates are in 1988 unless otherwise indicated.

Intervenor as the majority representative of its employees on February 14. Meanwhile, the Petitioner had begun organizing the Joint Employers' employees on about December 8, 1987, and continued its activities through January. On February 16, the Petitioner filed the instant petition.

In *Rollins Transportation*, as here, there were overlapping organizing campaigns, and the employer recognized one union after ascertaining through the use of a card check conducted by a neutral third party that that union demonstrated it had the support of the majority of the unit. The Board majority in *Rollins* held that where there are such contemporaneous campaigns and an unrecognized union files a petition, the employer's recognition of the other union is ineffective to bar the petition even where the employer was unaware of the petitioner's campaign at the time of recognition. In contrast to the majority here and in *Rollins*, I find that the operative event in determining the existence of a recognition bar should be the filing of the petition, not the start of the organizing campaign.

Just as the filing of a petition by the unrecognized union is the operative event for the imposition of strict employer neutrality in rival union initial organizing campaigns under *Bruckner Nursing Home*, 262 NLRB 955 (1982), the same principle should apply in deciding whether a recognition agreement constitutes a bar. Board policy must be to encourage the stability of the collective-bargaining process and the benefits flowing therefrom. Thus, where an employer in good faith recognizes a labor organization representing an uncoerced, unassisted majority before a valid election petition has been filed, I would find a recognition bar even if, at the time of recognition, a petitioner also had a card majority. Simply put, if the filing of a petition is the critical event in deciding whether, in rival union initial organizing situations, an employer's recognition of a majority labor organization is unlawful, it is desirable from a policy perspective that this same operative event should govern whether a lawful recognition should be accorded bar quality.

Thus, for the reasons fully and fairly stated by Member Cracraft in *Rollins*, I find that the Joint Employers' lawful, good-faith recognition of the Intervenor here resolved any question concerning representation and barred the Petitioner's rival petition for a reasonable period of time. Accordingly, I would reverse the Regional Director and dismiss the petition.

APPENDIX

Petitioner seeks to represent employees employed in the following bargaining unit:

All full-time and regular part-time service and maintenance employees, including nurses aides, dietary aides, housekeeping employees and laundry employees employed by the Employer at its

Neptune, New Jersey facility, excluding recreation aides, office clerical employees, technical employees, professional employees, guards, cooks and all other supervisors as defined in the Act.

At the hearing, the Joint Employers and the Intervenor stipulated to the appropriateness of this unit. Upon reconsideration, particularly noting the stipulation of the parties, I find that the agreed-upon unit is appropriate.

The sole issue remaining in this proceeding is the contentions of the Joint Employers and the Intervenor that the petition should be dismissed on the basis that there is a recognition bar. Without reciting all the facts surrounding the Joint Employers recognition of the Intervenor which are set forth in the original decision in this matter dated November 17, 1988, the record is clear that the Intervenor was recognized by King Manor Care Center on January 29, 1988, and by Healthcare Services Group, Inc. on February 12, 1988. On February 16, 1988, Petitioner filed the instant petition in which the employer was designated as "King Manor" and the bargaining unit as "all service and maintenance employees, including aides, orderlies, dietary employees and housekeeping employees exclud[ing] all office clerical employees, professional employees, guards and supervisors as defined in the Act." Petitioner filed an amended petition on September 1, 1988, designating the employer as "King Manor and Group Health Care Services."

On February 19, 1988, King Manor and the Intervenor entered into a collective bargaining agreement. The bargaining unit is defined in the collective bargaining agreement as "all full-time and regular part-time employees working 60 hours or more [out of the regular, full-time, 80-hour work period], namely: all nursing aides, dietary workers, but excluding all other employees, clericals, guards, supervisors, registered nurse, licensed practical nurses, technical and professional employees, supervisory cooks, instructors, administrative and executive employees and confidential employees." Subsequently, in a letter to the Intervenor dated March 25, 1988, Healthcare stated that it "agrees to the terms of, and adopts, the Agreement dated February 19, 1988, between your union and King Manor Care Center insofar as that Agreement applies to housekeeping and laundry employees," and sets forth the wage rates for housekeeping employees and laundry employees.

It is well-established that an employer's recognition of a union bars a petition for a reasonable period of time if the employer recognized the union in good faith, on the basis of a showing that a majority of the employees employed in the bargaining unit supported the union, and at a time when only that union was actively engaged in organizing the employees employed in the bargaining unit. *Josephine Furniture Co.,*

Inc., 172 NLRB 404 (1968); *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966).

The record reveals that on or about December 8, 1987, Peter Garcia, an organizer for Petitioner commenced organizing employees employed by the Joint Employers. He appeared at the facility on a daily basis from on or about December 8, 1987, through January 1988 in furtherance of his organizing activities. Garcia testified that he received approximately 9 signed and dated union authorization cards from employees by the end of January 1988.¹ Garcia also testified without contradiction that on the least one occasion in January 1988, he was observed in his organizing effort by the Joint Employer's Director of Nurses Weaver.

The Board, in determining the efficacy of a recognition agreement in a situation where more than one labor organization is engaged in organizing employees, held that the recognition bar applied only when an employer extended recognition to one labor organization in good faith based on a previously demonstrated majority and at a time when only that union was engaged actively in organizing the employees. *Sound Contractors Association*, 162 NLRB 364 (1966) (emphasis added). Further, the Board has held that, where recognition is granted on the same day a petition is filed by a second union, a question concerning the employees' choice or representation exists as of the time of recognition. Thus, no bar is found even if the employer granting recognition lacks knowledge of the petition or the rival campaign. *Superior Furniture Manufacturing Co., Inc.*, 167 NLRB 309 (1967).

It is axiomatic, however, that the purpose of, and reasons for, the election process is to allow employees to exercise freely their right to determine whether a labor organization will represent them. In dual campaigns, the possibility of employees who seek representation signing cards for more than one organization is common, albeit in a Board election, only one choice can be made. Because the free choice of employees is paramount, the purposes of the Act herein would not be served if I ignored the precedents set forth in *Sound Contractors* and *Superior Furniture*, *supra*.

In *Bus Systems, Inc.*, 297 NLRB 169 (1989), the Board affirmed its decision in *Rollins Transportation Systems, Inc.*, 296 NLRB 793 (1989), specifically stating that in *Rollins*, the Board held that when there are simultaneous campaigns and the unrecognized union files a petition, the recognition is ineffective as a bar and an election is required. The Board found that the principles set forth in *Bruckner Nursing Home*, 262 NLRB 955 (1982) are inapplicable in the representation context. The Board concluded that in the representation context as opposed to a situation in which unfair

¹ I am administratively satisfied that Petitioner obtained authorization cards from employees which pre-date the recognition of the Intervenor.

labor practice charges are filed against an employer, the emphasis should not be on whether the employer acts lawfully, but on whether the employees can freely choose a collective bargaining representative.

The evidence in the present case sufficiently establishes that the Petitioner was actively involved in orga-

nizing employees at the Employer's facility from the beginning of December 1987 through January 1988 prior to the time that the Joint-Employers recognized the Intervenor. In these circumstances, the employees should now be entitled to exercise their free choice and I find that there is no bar to the conduct of an election.