American National Can, Inc., Foster-Forbes-Liberty Glass Operations *and* American Flint Glass Workers Union, AFL–CIO, Petitioner. Case 17–RC–11151

August 26, 1996

DECISION ON REVIEW

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On September 7, 1994, the Regional Director for Region 17 issued a Decision and Direction of Election which found that the Employer's voluntary recognition of the Intervenor[1] as the representative of a wall-to-wall unit of its employees is not a bar to the processing of the instant petition, and that the petitioned-for unit of all apprentice and journeyman mold makers is appropriate. Thereafter, the Intervenor filed a timely request for review of the Regional Director's decision, contending that the petition should be dismissed because of a recognition bar. By Order dated October 6, 1994, the Board granted the Intervenor's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having considered the entire record in this case with respect to the issues on review, we affirm the Regional Director's finding that the Employer's extension of recognition to the Intervenor is not a bar to the processing of the instant petition, but modify his rationale to conform with our recent decision in *Smith's Food & Drug Centers*, 320 NLRB 844 (1996).

The Employer manufactures glass bottles in Sapulpa, Oklahoma. By letter dated July 12, 1994, the Employer voluntarily recognized the Intervenor as the representative of ''all hourly rated production and maintenance and skilled craft employees including warehousemen in the Sapulpa, Oklahoma plant, excluding all supervisors, guards, office clerical employees and all other employees excluded by law''—a unit of approximately 397 employees. This occurred prior to the filing of the instant petition and subsequent to an authorization card check of the Intervenor's majority status conducted by an impartial arbitrator.[2] The Intervenor and Employer subsequently entered into negotiations, and, on August 3, 1994, entered into a Memorandum of Agreement covering the unit recognized by the Employer.[3]

It is undisputed that prior to the Employer's recognition of the Intervenor, the Petitioner was actively seeking to organize a separate unit of the Employer's apprentice and journeyman mold makers. The Petitioner was clearly soliciting authorization cards and, in fact, had obtained cards from a majority of the mold makers prior to the Employer's recognition of the Intervenor.[4] Thus, the Petitioner and the Intervenor were simultaneously and actively competing for employee support, and each obtained authorization cards from a majority of the employees in the unit each sought.

In finding that the Employer's voluntary recognition of the Intervenor does not bar the instant petition, the Regional Director relied on *Rollins Transportation System*, 296 NLRB 793 (1989). In that case, the Board held that a recognition bar does not apply when two or more rival unions actively and simultaneously compete for employee support. In *Smith's Food*, however, the Board modified *Rollins* and held that despite the existence of active and simultaneous organizing campaigns, ''a voluntary and good-faith recognition of a union by the employer based on an unassisted and uncoerced showing of interest from a majority of unit employees will bar a petition by a competing union, *unless* the petitioner demonstrates a 30-percent showing of interest that predates the recognition.'' *Smith's Food & Drug Centers*, supra at 844. [Emphasis added.]

Here, it is undisputed that the Petitioner had secured the requisite 30-percent showing of interest in the petitioned-for unit prior to the Employer's voluntary recognition of the Intervenor. We note that the petitioned-for unit of approximately 24 mold makers is substantially smaller than the unit of approximately 397 employees for which the Employer recognized the Intervenor. The Intevenor, however, does not dispute the Regional Director's finding that the petitioned-for craft unit of mold makers is a separate appropriate unit for bargaining. In *Smith's Food*, the petitioners also sought units smaller than the recognized unit, and the Board dismissed both petitions because neither petitioner had secured the requisite 30-percent showing of interest prior to the employer's recognition of the intervenor. Thus, in the instant case, that the Petitioner seeks a smaller unit than that urged by the Intervenor does not alter our conclusion that the Employer's voluntary recognition of the Intervenor does not constitute a bar to the instant petition.

[1] Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL–CIO, CLC.

[2] The arbitrator found that the Intervenor presented 219 valid authorization cards.

[3] The Memorandum of Agreement purported to modify the multiplant collective-bargaining agreements then in effect between Intervenor and the Employer at its other facilities. The effect of the Memorandum of Agreement was to delay implementation at the Sapulpa plant of most of the economic provisions of the multiplant contract until April 1, 1995, or later.

[4] The Employer has approximately 24 mold makers. By June 24, 1996, the Petitioner had collected 17 authorization cards; it received 5 additional cards by mail subsequent to that date.

Accordingly, the Regional Director's Decision and Direction of Election is affirmed, and the case is remanded to the Regional Director for further appropriate action.

CHAIRMAN GOULD, dissenting.

For the reasons stated in my concurring opinion in *Smith's Food & Drug Centers*, 320 NLRB 844 (1996), I would dismiss the petition.