

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

McDONALD STEEL CORPORATION

Employer

and

Case No. 8-RC-16094

**UNITED STEELWORKERS OF AMERICA
AFL-CIO,CLC**

and

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 377**

Joint Petitioners

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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.
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance and warehouse employees, excluding all office, clerical employees, professional employees, guards and supervisors as defined in the Act.¹

The Employer is engaged in the manufacture of hot rolled steel at its facility in McDonald, Ohio. There are approximately 180 employees in the unit found to be appropriate.

The only issue in this case is whether the Joint Petitioners constitute a labor organization pursuant to Section 2(5) of the Act, which is qualified to represent the above-described unit, hereinafter referred to as the Unit.

The Employer takes the position that the Joint Petitioners have not demonstrated the requisite intent to qualify as the representative of the Unit. The Joint Petitioners maintain that they have made a *prima facie* showing of their intent to jointly represent the employees in the Unit, which has not been refuted by the Employer.

The record evidence demonstrates that the Petition was filed by the United Steelworkers of America, AFL-CIO, CLC and the International Brotherhood of Teamsters, Local 377, as Joint Petitioners. Patrick Gallagher, Organizing Coordinator for Subdistrict 1, District 1 of the United Steelworkers of America, testified that the USW and the Building and Construction Trades Department² entered into a Harmony Agreement in February 1994. Pursuant to the agreement, the parties entered into negotiations in January 2000 and agreed to commence a joint organizing

¹ The unit description is in accord with a stipulation between the parties.

campaign to represent the employees at the Employer's facility. The agreement was set forth in a letter, marked as Employer Exhibit 3, from Neil Ditchcock, attorney for the International Brotherhood of Teamsters, herein IBT, to El Stein, attorney for the United Steelworkers of America, herein USW. Gallagher further testified that he met with Rick Kepler, an organizer for the IBT, Local 377 on July 20, 2000 to discuss the joint petition. The agreement made between Gallagher and Kepler is set forth in a July 21, 2000 letter. The record indicates that the January 2000 letter and the July 21, 2000 letters are the only agreements made by the Joint Petitioners with respect to the McDonald Steel campaign.

The July 21, 2000 letter from Gallagher to Kepler provides that the USW and the IBT would begin an organizing campaign to jointly represent the employees at the Employer's facility. The letter further sets forth that in the event the campaign is successful, the USW will be the lead Union during joint negotiations. The letter also states that a local unit will be established upon the ratification of a collective bargaining agreement and both unions will be signatory to the agreement. The members of the local unit will be eligible for both USWA and IBT Local 377 functions, including but not limited to "educational opportunities, conferences and recreational activities". The letter further indicates that with respect to grievances filed pursuant to a future collective bargaining agreement, when such grievances are processed to a step or level above the local unit, the USW will be responsible for production and maintenance employees and the IBT Local 377 will be responsible for warehouse employees. Both unions agreed to waive initiation fees for all employees.

The Board has long held that two or more labor organizations are permitted to act jointly as the bargaining representative for a single group of employees. **S.D. Warren Company**, 150

² The IBT Local 377 is a part of the Building and Construction Trades Department and is therefore subject to this agreement.

NLRB 288 (1964); **Vanadium Corporation of America**, 117 NLRB 1390 (1957). It is also well established that the filing of a joint petition is *prima facie* showing of the requisite intent to represent the employees on a joint basis. **Automatic Heating & Service Co., Inc.**, 194 NLRB 1065 (1972); **Utility Services, Inc.**, 158 NLRB 592, 593 (1966). An employer, however, can rebut this showing and the petition will be dismissed if evidence indicates that the labor organizations do not intend to represent the employees in the bargaining unit on a joint basis. See **Suburban Newspaper Publications, Inc.**, 230 NLRB 1215, 1216 (1977); **Automatic Heating & Service, Co., Inc.**

The Employer argues that the intent of the Joint Petitioners to jointly represent the employees is rebutted by evidence reflecting the manner in which grievances will be handled beyond the local level; statements allegedly made regarding the allocation of dues; and alleged misrepresentations made to employees while soliciting cards.

The Employer submits that the Joint Petitioner's intent to separately represent portions of the Unit is clearly set forth in the January 18, 2000 letter from Ditchek to Stein. Under Section 2, the letter states, "The IBT and the Steelworkers will file a representation petition to jointly represent the employees. It is our understanding that there are approximately 180 employees in the unit. Approximately 40-45 of these employees are warehouse employees who will be represented by the IBT. The remainder of the employees will be represented by the Steelworkers." This document, however, must be considered in light of the consistent testimony of Gallagher and Kepler that the intent of the Joint Petitioners is to jointly represent the employees in the unit.

The Employer further argues that the Joint Petitioners' agreement in the July 21, 2000 letter providing that when a grievance is appealed to a step or level above the local unit, that the

USWA will be responsible for production and maintenance employees and the IBT will be responsible for the grievances of warehouse employees belies the Petitioners' intent to represent the employees jointly. The record testimony provides that such an understanding was reached between the Joint Petitioners on the basis of their respective expertise in each area rather than any intent to separately represent the employees on the basis of their job functions. Both Gallagher and Kepler testified that no decision has been made with respect to who will make the decision to pursue grievances to arbitration. Kepler testified that such details will be considered during the negotiating process.

I find that the agreement between the Joint Petitioners to delegate the responsibility for processing grievances does not demonstrate that the Joint Petitioners do not intend to jointly represent the Unit. The Employer submits that such division of work is representative of the Joint Petitioners' intent to separately represent the employees in the Unit. The Employer speculates that such division in contract administration would clash with the Joint Petitioners' duty of fair representation. It is clear that at the hearing both Kepler and Gallagher testified that the specific framework in which the Joint Petitioners intend to process grievances has not been determined. The Board has long held that even if there is to be an administrative division of employees among the Petitioners for the purposes of servicing the employees under a contract negotiated with the Employer, such an arrangement is not necessarily inconsistent with the concept of joint representation. **Utility Services, Inc.**, 158 NLRB 592, 593 (1966).

The Employer further argues that the handling of dues is probative in determining the Joint Petitioners' intent. The Joint Petitioners contend that the handling of dues is an internal union matter which is not relevant to the question of intent to jointly represent the unit. I agree that the handling of dues is an internal union matter that is not probative in determining the intent

of the Joint Petitioners. In Scofield v. NLRB, 394 U.S. 423 (1969), the Supreme Court endorsed the Board's policy of refraining from considering internal union matters unless it affects an employee's employment status. Furthermore, I find that the record clearly establishes that no agreement has been made between the USW and the IBT with respect to the allocation of dues.

The Employer asserts that the Joint Petitioners are incapable of jointly representing the unit due to specific language in the USW and the IBT's respective constitutions. The Employer provides that language regarding bargaining, strikes and exclusive representation. Each union's constitution prohibits the Joint Petitioners from representing the employees. I find that the internal procedures of each union as set forth in their respective constitutions are internal union matters which do not disqualify the two Unions from acting as a joint representative.

The Employer further submits that statements made by representatives of the USW and the IBT to the press demonstrate that the Joint Petitioners do not intend to jointly represent the Unit. The Employer alludes to a newspaper article introduced into evidence which includes statements made by a USW representative, Gerald Dickey, to Tom Gerdel, a reporter for the Cleveland Plain Dealer, regarding the nature of the Joint Petitioner.³

The Employer further submits that statements made by Kepler to The Warren-Tribune Chronicle and The Youngstown Vindicator referring to the payment of dues are demonstrative of such intent not to represent the unit jointly. Kepler testified on cross-examination that the reporter mischaracterized statements he made during the interviews and that decisions regarding the payment of dues have not been made by the Joint Petitioners.⁴

³ I find that the statements made by Gerald Dickey to Tom Gerdel in the Cleveland Plain Dealer article regarding representation of the unit is an out of court statement not under oath and therefore holds little probative value with respect to the Joint Petitioners' intent. Furthermore, I note that in evidence are the agreements between the USW and the IBT and the testimony of representatives from both the USW and the IBT, which hold more probative value than out of court statements made by a USW representative who is wholly removed from the issue at hand.

⁴ The Hearing Officer denied the Employer's request to call reporters Don Shilling from the Youngstown Vindicator and Larry Ringler from the Warren-Tribune Chronicle to testify to statements allegedly made by

In further support of its position, the Employer relies on the Board's decision in Automatic Heating & Service Co. Inc., 194 NLRB 1065 (1972), in which the evidence established that the two unions clearly intended to split the unit and represent only the employees who fell within their respective craft jurisdictions. In that case, the Board relied on testimony of each of the joint petitioners' representatives in making its decision. The Steamfitters' representative specifically testified that he was not willing to represent the Sheetmetal workers in the unit. The Sheetmetal Worker's representative testified that his organization could not bargain on behalf of the pipefitters or servicemen in the unit. Based on the testimony in the record, the Board determined that the intention of the parties was not to jointly represent the unit, but rather that each union intended to bargain solely for the employees within its jurisdiction as if they constituted separate units. This case is clearly distinguishable from the instant matter as no such testimony was elicited during the hearing. Both Gallagher and Kepler consistently testified that the USW and the IBT intend to jointly represent the unit.

While the record reflects that numerous issues have not been resolved between the Joint Petitioners regarding the handling of dues, the language on membership cards, voting rights of unit members in the internal matters of each union, there is no evidence in the record to suggest that the Joint Petitioners do not intend to act as a joint basis in representing the unit. Each of the open issues cited by the Employer involve specific details of how the internal affairs of the Joint Petitioners will be structured and coordinated. The fact that the Joint Petitioners have not resolved these issues prior to the election does not bear on their willingness to jointly represent the employees and bargain with the Employer.

Kepler regarding the payment and handling of dues. I affirm the Hearing Officer's ruling. As indicated above the issue of dues is an internal union matter not relevant to the Joint Petitioners' ability to jointly represent the unit.

In **Hydroscience, Inc.** 227 NLRB 1002, 1004 (1977), the representatives of the joint petitioners testified that the joint petitioners intended to bargain jointly with the employer for a single contract on behalf of all of the employees in the requested unit. The Board distinguished that case from the facts in **Automatic Heating & Service Co., Inc.**, *supra*, and ordered an election. Undisputed testimony establishes that the Joint Petitioners herein have met the standard of proof accepted by the Board in **Hydroscience** and are thereby qualified to represent the petitioned-for unit.

The Employer further submits that the Joint Petitioners have misrepresented to the employees their intent to act as joint representatives. The Employer states that such misrepresentations arose from the Joint Petitioners' failure to present the employees with agreements made between the USW and the IBT regarding their agreement to jointly organize the Employer's facility. The record demonstrates that the employees were presented with authorization cards that specifically state that the employees authorize the USW and the IBT to act as joint representatives. The evidence further indicates that a flier was given to employees stating that a joint representation petition was filed by the USW and the IBT. Thus, the record belies the Employer's position that the USW and IBT intend to separately represent the Unit. Furthermore, Gallagher testified that the Joint Petitioners held two meetings with the employees and explained joint representation.

The Employer submits that in **Joseph T. Ryerson & Son v. NLRB**, 216 F.3d 1146 (D.C. Cir. 2000), the court held the members of the bargaining unit must have accurate information to inform their election decisions in the joint representation context. In that case, the court held that the Employer failed to rebut the presumption that the joint petitioner's intended to jointly represent the unit. The court relied on the testimony of union supporters and officials which

clearly indicated the unions' intention to bargain jointly as well as the employer's failure to elicit evidence at the hearing to show that there were any misrepresentations made to employees by union representatives regarding joint representation. Similarly in the instant case, there is no evidence to show that the Joint Petitioners have misrepresented to the members of the putative bargaining unit their intent to jointly represent the Unit.

Accordingly, on the basis of the above, I find that the Joint Petitioners constitute a labor organization within the meaning of Section 2(5) of the Act and have demonstrated the requisite intent to act as the collective bargaining representative of the Unit involved herein. Accordingly, I shall direct an election in this matter.⁵

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and

who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED STEELWORKERS OF AMERICA AFL-CIO, CLC** and **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 377**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969)**. Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

⁵ On August 22, 2000, the Employer, by letter, requested an administrative investigation into the showing of interest in this case because of alleged forgery of some of the authorization cards. By letter dated September 21, 2000, informed the parties that the investigation revealed the showing of interest was valid.

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **October 6, 2000**.

Dated at Cleveland, Ohio this 22nd day of September 2000.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

460-5067-5600