

Cooper International, Inc. and Teamsters Local 375, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 3-RC-5732

August 27, 1973

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

On June 6, 1973, the Regional Director for Region 3 issued a Decision and Direction of Election in the above-entitled proceeding in which he directed an election among a unit of all full-time and regular part-time general warehouse employees employed by the Employer at its 345 Payne Avenue, North Tonawanda, New York, location, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees. In his Decision, the Regional Director rejected the Employer's contention that an immediate election is barred because its present complement of employees is not a substantial and representative one. Thereafter, the Employer, in accordance with the National Labor Relations Board's Rules and Regulations, Series 8, as amended, filed a timely request for review of the Regional Director's Decision on the grounds that he made findings of fact which are clearly erroneous and that he departed from officially reported precedent.

By telegraphic order dated July 2, 1973, the National Labor Relations Board granted the request for review and stayed the election pending decision 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 considered the entire record in this case with respect to the issues under review and finds that no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Employer contends that the Regional Director erred in finding that the date of its anticipated relocation of operations was not so certain as to justify barring an immediate election. Subsequent to filing its request for review, the Employer submitted evidence that it had in fact executed a purchase agreement for a new facility, as will be more fully discussed below.

The Employer is engaged in the warehousing and distribution of sporting and leather goods with its

principal location at Payne Avenue in North Tonawanda, New York. The record discloses that approximately 1 year prior to the date of the hearing herein the Employer decided to close its existing facilities and to purchase one large facility in order to accommodate its expanding volume of business. As of the time of the hearing, the Employer had entered into negotiations for the purchase of a warehouse and 6 acres of land in Lewiston, New York, approximately 18 miles from its present location. Although at that time formal papers for the purchase of the Lewiston property had not been executed, the Employer anticipated that a closing date of August 1, 1973, would be established and that within 2 weeks thereafter its operations in North Tonawanda would be completely transferred to the Lewiston location.

The record further discloses that the Employer presently employs 29 employees in the unit found appropriate and estimates that it will increase this number to 43 when the move to Lewiston is completed. The Employer has stated its intention to offer all its present warehouse employees employment at the new facility.

The Regional Director concluded that an immediate election was not barred, finding that as of the time of the hearing the Employer had not completed negotiations for the purchase of a new warehouse and that, therefore, the date for the proposed transfer of operations was uncertain. He further found that, even if the transfer were to occur in the near future, it would be speculative to assume that a substantial and representative complement of employees would not continue their employment in view of the Employer's intention to offer its current employees employment at the Lewiston facility.

The Employer contends that its planned transfer of operations is so imminent as to warrant the dismissal of the petition herein. In support of this contention, as above indicated, the Employer has submitted a copy of an executed purchase agreement which provides for transfer of title of the Lewiston property to the Employer on or before August 17, 1973. With respect to the likelihood of transfer of unit employees to the Lewiston location, the Employer contends that it is unlikely that a substantial number of them will accept employment at the new facility, since, according to the testimony of its distribution manager, most of them reside at distances from 18 to 25 miles from the Lewiston location, automobile ownership and use among them are limited, and public transportation between North Tonawanda and Lewiston is inadequate. The Employer urges that, in light of these factors, it would be far more speculative to assume that a substantial and representative complement of employees will continue their employment.

We shall not attempt to ascertain the probabilities with respect to whether a substantial and representative complement of employees will accept employment at the Lewiston facility. We find, however, that in view of the imminence of the transfer of operations and the absence of evidence showing that the Employer has as yet offered, and that a considerable proportion of the unit employees have indicated that they would accept, such employment, no useful purpose would be served by processing the petition at this

time. We, therefore, shall dismiss the petition herein without prejudice to the filing of a new petition, supported by an adequate showing of interest, when the Lewiston facility is in operation and a substantial and representative working force is there employed.

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.