Martin Marietta Aluminum, Inc. *and* United Steelworkers of America, AFL–CIO–CLC, Petitioner.[1]
Case 7–RC–12415

November 5, 1974

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On May 21, 1974, the Regional Director for Region 7 issued his Decision and Direction of Election in the above-entitled proceeding in which he directed an election in a unit of all production and maintenance employees of the Employer at the Employer's Adrian, Michigan, plant, rejecting the Employer's assertion that the petition should be dismissed because the plant was in the process of being closed, there had already been a substantial reduction in the employee complement, and the remaining employees would be terminated before the end of August 1974, the Employer's outside date for total closure of the plant. 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[2] of the Regional Director's Decision on the grounds, *inter alia,* that in denying the Employer's motion to dismiss the Regional Director had departed from officially reported Board precedent and made erroneous findings of fact.

By telegraphic order dated June 21, 1974, the National Labor Relations Board granted the request for review and stayed the election pending decision on review.[3]

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 record with respect to the issues under review, including the Employer's brief on review, and finds no question affecting commerce exists herein concerning the representation of certain 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 concluding that there is some chance of continuity of employment here, and that he based that conclusion essentially on testimony by the plant manager in response to hypothetical questions, contrary to the explicit testimony on what prospects for sale of the plant were actually extant. The Employer also contends, *inter alia,* that the Regional Director's action in directing an election herein in the face of imminent total closure of the plant is inconsistent with Board precedent.

The Employer has engaged in the manufacture of aluminum mill products at its Adrian plant since it took over the facility from another company in 1969. Because of a shortage of metal supplies in the industry, and because the aged equipment in the 30-year-old plant is no longer competitive with more modern equipment, the Employer made the economic decision to close the plant. After having unsuccessfully sought a purchaser at least since November 1973, the Employer on April 12, 1974, wrote to all plant employees and issued a public release announcing the impending plant closure, set for August 31, 1974. The story was carried on radio and in the newspapers, and meetings were held with public officials about the announced closing. On the same day as the announcement, the Employer stopped taking further orders at this plant, and shortly thereafter notified various utility companies and suppliers that it was terminating its contracts with them. The record reveals that any work not finished by September 1 would be shipped to the Employer's Torrence, California, plant for completion, as the Adrian plant would be inoperable for production by that date and without utilities except for those necessary to meet insurance company requirements.

It is evident from the record that the Employer was already in the process of closing the plant prior

[1] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), was permitted to intervene in this matter on the basis of an adequate showing of interest

[2] The Employer also filed a motion to supplement the record

[3] As in *M B Kahn Construction Co, Inc,* 210 NLRB 1050 (1974), our dissenting colleague once again laments the fact that our review processes do not function as quickly as he would like As we pointed out in *Kahn,* however, we cannot ignore due process requirements The Board has devised its review procedures with two considerations in mind (1) the need for expedition in representation cases, and (2) the need to be fair, to give parties appearing before us sufficient time in which to present their positions, and to give ourselves the necessary time carefully to review their positions

We do not lightly grant review of a Regional Director's decision Our standards for granting review are exacting and narrowly drawn In the instant case, a majority of the Board believed the issue raised to be worthy of review, and in considering the matter further after granting review concluded that the Regional Director erred in scheduling an election under circumstances where the plant closing was certain rather than speculative and imminent rather than distant in point of time Our colleague disagrees with that judgment, as is his privilege But we think it inappropriate to characterize our decision on the merits as an instance where "protracted review procedures" have "frustrated the holding of an election "

Had we not been concerned, on June 21, that the merits of the issues both of certainty and imminence of closing were ones which ought to have given us pause, we would not have granted review It was and is our colleague's view that the Regional Director was right on those issues It is our view that he was wrong It is that difference in judgment that lies at the core of this case—not any inevitable result of unwarrantedly "protracted review procedures "

Moreover, had it been possible to issue a decision in this case on the day following the period for submission of briefs on review, the result herein would be unchanged There was then less than 2 months remaining before the definite closing date of the plant herein involved, it was that short period of time, and the substantial decrease in the number of employees available, upon which the majority based its decision

to the filing of the petition on April 19. A substantial number of employees had already been terminated before the hearing herein. By the scheduled election date, the employee complement would be down approximately 50 percent, with further substantial layoffs scheduled to occur shortly thereafter. The record shows that closure of the plant herein is definite and imminent. Moreover, the Employer has no plans or prospects for sale of the facility as an ongoing business. Contrary to the Regional Director's finding, we view the likelihood of any continuity of employment here as purely speculative.

On the basis of the foregoing, we find that, in view of the imminent closing of the plant here involved, no useful purpose would be served by conducting an election herein.[4] The Employer's motion to dismiss the petition herein is hereby granted.

ORDER

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

MEMBER FANNING, dissenting.

This is a case without issue except that of whether to hold an election in a "contracting" unit.[5] More than 4 months of operations remained when the petition was filed on April 19. In his May 21 decision the Regional Director directed an election, noting that there would be a representative complement of employees in June when the election would be held, to wit: 301 employees, as projected by the Employer, out of a unit of 430 at the time of hearing. Also, there would be a representative complement for a substantial time thereafter,[6] and there was the possibility that the plant might be sold and its production continued. The Regional Director perceived a "vital concern" to employees in having representation during the last few months of their employment and during the course of the termination of their employment. I agree.

My colleagues, however, granted review on June 21 and now dismiss because "no useful purpose" would be served by an election at this time. As in *M. B. Kahn Construction Co., Inc.*, 210 NLRB 1050, a protracted review process has again frustrated the holding of an election in a concededly appropriate unit and denied employee rights. I know of no requirement that the "life" of an appropriate unit be indeterminate as a prerequisite to holding an election.

The Board recognizes that employees who are already being represented when an employer makes a decision to close one of two or more of its plants are entitled to bargain about employee rights incident to the decision to close.[7] Why then deny unrepresented employees, who promptly seek the chance to elect a representative when they hear of the Employer's plan, an opportunity to do so?

I voted to deny review of the Regional Director's Decision and Direction of Election. I would have held that election. I consider the policy reflected in *Kahn, supra,* and this case to be contrary to the fundamental policy expressed in Section 1 of our statute.

[4] In view of our disposition of this matter, we need not reach other contentions of the Employer or rule on its motion to supplement the record

[5] The Regional Director voted seven engineering department employees subject to challenge The Employer contends that the record is adequate to decide the question without resorting to challenge This position is hardly consistent with Employer's position that no election at all should be held, and it urges the Board not to reach it When a sizable unit such as this is rapidly being decimated, it is clear that a postelection resolution is warranted for so small a group

[6] The Employer projected 203 employees in July and 93 in August In its brief it concedes that termination does not include any recall rights

[7] *Royal Typewriter Company, a Division of Litton Business Systems, Inc.*, 209 NLRB 1006 (1974)