In the Matter of COLUMBIA PICTURES CORPORATION, PARAMOUNT PICTURES, INC., WARNER BROS. PICTURES, INC., LOEW'S INCORPORATED, UNIVERSAL PICTURES COMPANY, INC., RKO RADIO PICTURES, INC., SAMUEL GOLDWYN, DOING BUSINESS AS SAMUEL GOLDWYN STUDIOS, REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIOS, INC., AND TWENTIETH CENTURY-FOX FILM CORPORATION, EMPLOYERS *and* INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOTION PICTURE MACHINE OPERATORS OF U. S. & CANADA, PETITIONER

Case No. 21–R–4006.—Decided March 9, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Upon the entire record in this case,[2] the Board finds:

1. The Employers are engaged in commerce within the meaning of the National Labor Relations Act.

2. International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of U. S. & Canada, herein called the Petitioner, and Brotherhood of Painters, Decorators and Paperhangers of America, Screen Set Designers, Illustrators and Decorators, Local 1421, AFL, herein called the Intervenor, are labor

[1] The hearing officer denied the Intervenor's motions, all based upon pending unfair labor practice charges filed by the Intervenor against the Employers (Case No. 21–CA–255), for a continuance of the hearing, an adjournment of the hearing, the consolidation of this proceeding with the unfair labor practice proceedings, and the stay of this proceeding pending an appeal from the hearing officer's rulings denying such motions. The Intervenor also moved to dismiss the petition herein, on the basis of such pending unfair labor practice charges. The hearing officer referred this motion to the Board. For the reasons set forth in Section 5, *infra*, the hearing officer's rulings are affirmed, and the Intervenor's motion to dismiss is denied.

[2] As the hearing in this matter has been concluded, the Intervenor's petition for leave to appeal from rulings of hearing officer is being considered as a memorandum in support of its objections to such rulings. As the record fully presents the issues involved herein, the Intervenor's requests for oral argument, and for leave to file a brief in support of its petition for leave to appeal, are denied.

organizations claiming to represent certain employees of the Employers.

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

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

All set decorators employed at the Employers' California studios, excluding professional employees, guards, and supervisors, as defined in the Act.[3]

5. The determination of representatives:

The Intervenor contends that, because of the pendency of certain unfair labor practice charges filed by the Intervenor against the Employers,[4] the Board should not direct an immediate election in this proceeding. We do not agree.

The petition in this proceeding has been pending since May 21, 1947. Because of the pendency of two unfair labor practice charges previously filed by the Intervenor against the Employers,[5] the investigation of the question concerning representation in this proceeding had been held in abeyance. Subsequently, the two charges were dismissed by the Regional Director. One dismissal [6] was appealed to the General Counsel, who upheld the action of the Regional Director.

The pending unfair labor practice charge was filed 4 days prior to the hearing in this proceeding, and after the service of the notice of hearing. Although the pending charge alleges discriminatory refusals to hire subsequent to the dismissal of the previous charges, the basic pattern of conduct is apparently the same as that relied upon in support of the previous charges, and found by the Regional Director and, in one of the two cases by the General Counsel, not to support the issuance of complaints.[7]

It is true, as asserted by the Intervenor, that the Board does not, as a general practice, direct an election during the pendency of an unfair labor practice charge affecting the unit involved in the representation proceeding, absent the filing of waivers by the charging party. This practice is, however, a matter which lies within the discretion of the Board, as part of its function of determining whether an election will effectuate the policies of the Act, and is not required

[3] This is the same unit as was established in a prior proceeding. *Matter of Columbia Pictures Corporation, et al.*, 61 N L R B. 1030, 64 N. L R B 490.

[4] Case No. 21–CA–255

[5] Cases Nos 21–C–2901 and 21–C–3094

[6] Case No 21–C–2901

[7] The Board is not empowered to review the refusal of the General Counsel to issue a complaint. Sec 3 (d), National Labor Relations Act, as amended

either by the Act or by the Board's Rules and Regulations. Accordingly, an exception may be made to the general practice when, in certain situations, the Board is of the opinion that the direction of an immediate election will effectuate the policies of the Act.[8]

On the basis of the particular facts in this case,[9] we are of the opinion that it will best effectuate the policies of the Act, and promote the orderly processes of collective bargaining, to direct an immediate election herein, despite the pendency of the unfair labor practice charges and the refusal of the Intervenor to file waivers with respect thereto. Accordingly, we shall direct an immediate election herein.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of U. S. & Canada, or by Brotherhood of Painters, Decorators, and Paperhangers of America, Screen Set Designers, Illustrators and Decorators, Local 1421, or by neither.[10]

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.

[8] See, for example, *Matter of Bercut Richards Packing Company, et al.*, 70 N L R B. 84

[9] Especially the length of time this proceeding has been pending, the fact that the employees in the unit have been without representation for collective bargaining purposes during that period, and the dismissal of the earlier charges, which charges were apparently grounded upon the same basic pattern of conduct as the pending charge.

[10] Upon a prompt request to, and approval thereof by, the Regional Director, either participant in the election may have its name removed from the ballot.