AMERICAN DYEWOOD COMPANY *and* LOCAL 399, INTERNATIONAL CHEMICAL WORKERS UNION, AFL, PETITIONER. *Case No. 2–RC–4165. May 12, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before George Turitz, hearing officer. 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, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent employees of the Employer.

3. 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 Petitioner seeks a unit of production and maintenance employees at the Employer's Belleville, New Jersey, plant, excluding office clerical employees, professional employees, guards, watchmen, watchman-fireman, executives, and all supervisors as defined in the Act. The Employer and the Intervenor urge their current contract as a bar to the instant petition. The Petitioner advances a number of reasons in support of its contention that the contract is not a bar. It asserts that the contract was unreasonably extended; that it contains an illegal union-security clause; that employees are otherwise subject to illegal coercion by the Intervenor and Employer; and, finally, that the unit covered by the contract is inappropriate because it contains guards as well as production and maintenance employees. We find no merit in these contentions.

On May 12, 1950, after a consent election lost by the Petitioner in April 1950,[2] the Employer and the Intervenor executed a contract effective for the 1-year period ending March 1, 1951. On November 28, 1950, a supplemental agreement was signed providing for a general wage increase and extending all other terms of the contract until March 1, 1953. The petition herein was filed on November 23, 1951. As the petition was filed after the expiration date of the original contract, we find that it was untimely.[3] We find also that the extension

[1] Local 115, United Construction Workers, United Mine Workers, was permitted to intervene on the basis of its contractual interest.

[2] Case No. 2–RC–2099.
The Intervenor, which has never been in compliance with Section 9 (f), (g), and (h) of the Act, was not a party to the consent agreement and did not participate in the election.

[3] Cf. *National Gypsum Company*, 96 NLRB 676; *W. S. Ponton of New Jersey, Inc.*, 93 NLRB 924.

of the contract for a 2-year period beyond the original term was not unreasonable.[4]

The Petitioner contends that although the union-security provision [5] has not gone into operation, it nevertheless has a coercive effect because its deferral clause is too vague. We have held that a contract containing an illegal union-security provision operates as a bar, if it also contains a saving clause which makes it clear that a union-security provision is not to take effect until such time in the future as the legality of the union-security provision is established.[6] In the present case, the deferral clause clearly discloses the parties' intent to defer the application of their union-security agreement until such time as it might lawfully become effective.

The Intervenor's constitution and bylaws provides that "any member becoming 3 months in arrears for dues unless officially exonerated for same, shall forfeit his membership, and shall be subject to dismissal from employment." The Petitioner points out that the constitution and bylaws was attached to the contract and distributed by the Employer to employees as a single document; it contends that as a consequence the quoted language is a form of duress and coercion in the absence of a bona fide union-security provision in the contract. There is nothing in the contract which requires the Employer to abide by the terms of Intervenor's constitution and bylaws. Accordingly, we find that the parties did not incorporate in the contract the above provision of the Intervenor's constitution and bylaws. Moreover, as noted above, the operation of the union-security provision in the contract had been effectively suspended by the deferral clause.

The Petitioner takes the position that in requiring the Employer to consult with the Intervenor respecting layoffs, the seniority clause in the contract is so framed that the latter can, in the absence of a bona fide security provision, unfairly discriminate against those employees who are not its members. As the contract sets out seniority principles which are uniform for union and nonunion employees alike, there is no merit in this contention of the Petitioner.

The Petitioner also urges that the Intervenor's contract is not a bar on the technical ground that it includes several guards in the appro-

[4] *International Paper Company*, 80 NLRB 751.

[5] This provision reads as follows:

> Should the existing Labor Law be amended so as to permit it, or should the current law be interpreted authoritatively to make it permissible, or should a new law be enacted clearly making it legal, it is agreed that all employees who are members of the Union as of the effective date of this agreement, and all employees who thereafter have become or may hereafter become members of the Union, shall remain members of the Union in good standing for the duration of this agreement as a condition of continued employment by the Company; and further, should it become legal to do so, as stated above, that all new employees hired after the day of this agreement, shall, upon the completion of the probationary period as provided herein, become members of the Union and remain members in good standing for the duration of this agreement as a condition of continued employment.

[6] *Barium Steel and Forge, Inc.*, 88 NLRB 564; *Wyckoff Steel Company*, 86 NLRB 1318.

priate unit. Although the recognition clause of that contract does not mention guards, some of the substantive terms relate to working conditions of guards. This contention would require an unwarranted and impractically strict interpretation of Section 9 (b) (3). That section of the amended Act merely forbids the Board itself to establish as appropriate a unit containing guards as well as other employees. It does not impose upon the Board a duty to police every contract voluntarily established by the parties, to determine whether they have covered the working conditions of individual employees whom the Board, if called upon to make a decision, would exclude. The Board's contract bar rule is based upon broad policy considerations. It aims to stabilize the relationship between employers and their employees' bargaining representatives for the duration of a reasonable contract term. The Intervenor and the Employer are bargaining on the basis of such a contract. To disrupt that relationship, it seems to us, should require something more than a finding that several employees should not have been included in an otherwise clearly appropriate unit. We specifically do not find that guards may be appropriately included in a production and maintenance unit. Contrary to our dissenting colleague's position, we do not believe that we are indirectly making any such decision. We simply are not persuaded, as a matter of over-all policy, that the existence of coverage here warrants disturbing stability by making inapplicable the Board's normal contract bar doctrine. To do so, we are convinced, would invite wholesale examination of existing contracts as a first step toward raids by competing labor organizations. It would jeopardize numberless existing contracts for no reason other than the parties' voluntary inclusion of a fringe category of employees whom this Board, when exercising its affirmative statutory powers, would concededly lack authority to direct them to include.

Under these circumstances, we find that the current contract between the Employer and the Intervenor operates as a bar to an immediate determination of representatives. We shall therefore dismiss the instant petition.

Order

IT IS HEREBY ORDERED that the instant petition be, and hereby is, dismissed.

MEMBER HOUSTON, dissenting in part:

I dissent from the majority's finding that the Intervenor's contract is a bar to this petition despite the fact that the contract unit contains guards as well as production and maintenance employees. While it is

true that this unit was established without Board sanction,[7] I am not prepared to concede that the majority's decision here involves no affirmative action on its part. Rather I believe that the majority by putting its stamp of approval on this type of unit is accomplishing indirectly what Congress has specifically forbidden it to do directly. Section 9 (b) (3) of the amended Act provides: "That the Board shall not... decide that any unit is appropriate for such purposes [collective bargaining] if it includes, together with other employees, any individual employed as a guard. . . ." Historically, the Board's contract bar rule has assumed that the union protected for a reasonable period in its bargaining relationship was representing an appropriate unit or, at least, one not clearly inappropriate.[8] Even though the majority has made no formal unit finding in this case, it has approved continued bargaining by the Intervenor and Employer for a unit including guards together with other employees. This is exactly the kind of unit that Congress, it seems to me, intended to eliminate from national collective bargaining by the language contained in Section 9 (b) (3). To say, as the majority does, that the Board should interpret this section as applicable only to units initially established by it and as inapplicable, at least policy-wise, to units coming under Board scrutiny seems to me to thwart the clearly expressed purpose of Congress. For it is apparent that Congress directed this prohibition at the Board alone simply because it is the Board which is entrusted with the exclusive function of defining appropriate units. Consistent with the Board's established policy,[9] I believe it to be the Board's duty to encourage labor contracts in accord with the policies of the amended Act and to discourage by every means in its power, including the Board's discretionary contract bar rule, those contracts that are directly contrary to such policies. I would therefore find that the contract in this case is not effective as a bar to a present direction of an election.

[7] As indicated *supra*, a consent election immediately preceded the execution of the instant contract. It is noteworthy that the unit set out in that election, conducted under Board auspices, specifically excluded guards from the appropriate unit. Apparently, the inclusion of guards in the contract unit was in flagrant disregard of the unit previously approved by the Board's Regional Director.

[8] *Savannah Electric and Power Company*, 48 NLRB 33.

[9] *C. Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163.

LOUISVILLE CONTAINER CORPORATION *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE). *Case No. 9-CA-411. May 13, 1952*

Decision and Order

On November 2, 1951, Trial Examiner Lee J. Best issued his Intermediate Report in this case, finding that the Respondent had engaged