requires the dismissal of a petition filed, as here, during the insulated period of a contract, regardless of the conduct of the contracting parties during this period Accordingly, we find the petition herein to have been untimely filed and we shall therefore order its dismissal

[The Board dismissed the petition]

Deluxe Metal Furniture Company *and* Sheet Metal Workers International Association, AFL–CIO, Petitioner. *Case No. 6–RC–2062 September 23, 1958*

DECISION AND ORDER

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

On March 28, 1958, the Board issued to the parties and to all other interested organizations and persons a notice and invitation to submit briefs or comment The Board stated that it was inviting an expression of views in this case and several related representation cases for the purpose of considering possible revisions in some of its contract bar policies

Briefs were filed by the Petitioner and the Intervenor herein [1] Briefs *amici curiae* were received from various organizations.[2] Pursuant to requests therefor, the Board, on May 23, 1958, issued a notice of hearing indicating its interest in hearing oral argument by parties to the proceeding and the organizations filing briefs *amici* On June 17, 1958, the Board heard oral argument

The Board has considered the entire record, the briefs of the parties, the other briefs and statements, and the oral argument in this case and finds

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

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

3 The Employer and the Intervenor have a history of collective bargaining beginning in 1946 after a consent election Article XVI of their most recent agreement provided

[1] United Electrical Radio and Machine Workers of America, UE, Local 633, intervened on the basis of a contract interest

[2] Briefs or comments were received from the Chamber of Commerce of the United States The American Federation of Labor and Congress of Industrial Organizations, The United Electrical Radio & Machine Workers of America (UE), United Steelworkers of America, Sheet Metal Workers International Association, AFL–CIO, and International Union of United Brewery, Flour, Soft Drink and Distillery Workers of America, AFL–CIO

> This agreement shall remain in full force and effect for the period from October 5, 1955, to January 10, 1958, and shall thereafter be continued for one year periods unless notice of termination or modification in writing by registered mail is given by either party to this agreement. Upon receipt of such notice a conference shall be arranged to be held within ten (10) days.

On November 7, 1957, the Intervenor, apparently pursuant to article XVI, sent to the Employer by registered mail a letter of notification of a desire to modify the existing agreement.[3] The Employer acknowledged the notice and the parties arranged a meeting date. The Intervenor submitted 12 proposed changes, and negotiation meetings were held on November 25, December 5, 19, and 27, and January 8, 17, and 20.

At the January 8 meeting, the last meeting before the contract anniversary date, the parties found that of the 12 bargaining issues they were in agreement on all but 2, namely the amount of the wage increase and the duration of the contract. No further meeting date was set, but the Intervenor held a membership meeting at which it presented the Employer's last offer which was rejected. Thereupon, the Intervenor notified the State and Federal mediation and conciliation services.

The Employer and the Intervenor met with the mediators on January 17, 1958, and they reached general agreement. However, the Employer was unwilling to complete a contract unless the employees, who had ceased work on January 13 due to a strike and/or lockout, were on the job when such an agreement was presented to them for ratification. Accordingly, the parties set a meeting date for Monday, the 20th, at 10 a. m. At a union meeting held Saturday, the 18th, the Intervenor arranged with the employees for their return to work the following Monday and to meet with them that day at 4 p. m. to report the results of the negotiations.

On January 18 at 8:40 p. m., Petitioner dispatched a telegram to the Employer's place of business and the same message to Mr. Gofberg, the vice president and general manager, at his home address, claiming to represent a majority of the employees involved and requesting a conference. This message was telephoned to Mr. Gofberg at his home January 18 at 10:03 p. m. by the Western Union operator who entered the notation that it was to be delivered to the Employer's business office on Monday morning, January 20. At 9:46 a. m. Monday, the Petitioner's representative telephoned Mr. Gofberg, inquiring with regard to receipt of the telegraphic message and reiterating its

[3] The notice reads: "Under the provisions of the Taft-Hartley Act of 1947, but without in any way conceding that the Act requires this notice, United Electrical, Radio and Machine Workers of America (UE), Local 633, hereby notifies you of its desire to modify our existing collective bargaining agreement which has the anniversary date of January 10, 1958."

substance. He was told that another officer was in charge of such matters and that, in any event, the Employer was then about to conclude negotiations. At 9:58 a. m. Monday, the telegraphic message was transmitted by teletype to the Employer's place of business.

The Employer and the Intervenor completed negotiations, dictated, checked, and corrected a so-called memorandum of understanding, and signed it shortly after noon on January 20. The employees ratified the agreement at the 4 p. m. meeting. The petition herein was filed in the Board's Regional Office on the following day, January 21, 1958.

The Employer takes the position, *inter alia*, that it had not received, and had no knowledge of, the Petitioner's demand for recognition until after the memorandum agreement was signed; that the memorandum agreement was merely a supplement or modification of the old contract made retroactive to the termination date of that contract; and that the old contract continued in effect.

The Intervenor takes substantially the same position as the Employer except that it contends that the notice was merely one for modification; that the old contract automatically renewed; and that the memorandum agreement merely reflects the results of negotiations for modification.

The Petitioner claims that appropriate and timely demand was made upon the Employer for recognition on January 18, when the telegraph operator read the contents of its telegram to Mr. Gofberg, or, in any event, on the morning of January 20, when its representative telephoned Gofberg prior to the consummation of the memorandum agreement; that in accordance with the *General Electric X-Ray* rule,[4] the petition was filed within the required 10 days after the demand thereby removing the memorandum agreement as a bar; and that, contrary to the argument of the Intervenor, automatic renewal of the old contract was forestalled by the Intervenor's notice and the memorandum agreement was in fact an attempt to negotiate an entirely new contract which failed.

As heretofore indicated, the Board has been reconsidering various aspects of its contract bar rules with a view to simplifying and clarifying their application wherever feasible in the interest of attaining more expeditious disposition of representation cases and of achieving a finer balance between the oftentimes conflicting policy considerations of fostering stability in labor relations while assuring conditions conducive to the exercise of free choice by employees.

In furtherance of these objectives, the Board has reexamined those phases of the contract bar rules which are related to the facts presented in the instant case, more particularly, the timeliness and sufficiency of rival claims and petitions, and the effect of the conduct of the parties with respect to their contract.

[4] *General Electric X-Ray Corporation*, 67 NLRB 997.

Having considered views and suggestions presented by the parties and the organizations participating as *amici curiae* both in briefs and oral argument before the Board, as well as its own experience, the Board has decided to make the following specific revisions in the rules applicable to this phase of its contract bar policies.

We have decided to abandon the *General Electric X-Ray* doctrine, giving weight to a bare claim where a petition is filed within 10 days following the claim. This doctrine, it may be noted, was itself a limitation on earlier practice which permitted a bare claim to defeat a subsequent but otherwise valid contract without limitation as to time; it was adopted by the Board because of the growing familiarity of labor organizations with the Board's policies and practices, in order to prevent claimants without representation strength from indefinitely frustrating collective bargaining. More than 12 years have passed since the *X-Ray* case was decided. With the passage of time, even this limited intrusion upon collective bargaining is now unwarranted. Substantially more of industry is now organized and in current-day labor relations rival unions and employees generally are even more well informed than when the doctrine was adopted of the duration of any existing contract and the applicable policies and practices of the Board.

Thus, the *X-Ray* rule no longer serves a need for the protection of an opportunity for free choice by the employees, but rather has become a means of disrupting the stability of labor relations and placing the parties who are in the process of negotiating a contract in a state of uncertainty. Moreover, in view of the new rules set forth hereinafter, unions and employees will now know precisely when they may be expected to file a petition in order to obtain an election.

From an administrative point of view, giving bare claims no weight in determining contract bar issues will have the salutary effect of making it unnecessary for the parties to present, and the Board to consider, evidence bearing on such questions as whether a claim was communicated; by whom and to whom; the authority to receive the claim; whether the language used constituted a claim; and when it was received in relation to the execution or renewal of the contract and the filing of the petition, in order to determine whether the 10-day *X-Ray* rule has been met.

For the foregoing reasons the Board has decided to eliminate the *X-Ray* rule and to require instead the filing of a petition with the Board at an appropriate time.

However, this action leaves undisturbed the effect given substantial claims, i. e., where an incumbent union continues to claim representative status, or where a nonincumbent union has refrained from filing a petition to establish its representative status in reliance upon the employer's conduct indicating that recognition had been granted or

that a contract would be obtained without an election. If, in these circumstances, the employer nevertheless executes a contract with another union, that contract will continue not to bar an election.[5] Retention of the status given substantial claims is regarded as desirable because such claims arise in situations indicating unsavory practices.

A second change which the Board has decided to make relates to the effect to be given a contract which has been executed on the same day that a petition has been filed. Such a contract will bar an election if it is effective immediately or retroactively and the employer has not been informed at the time of execution that a petition has been filed. However, of course, a contract will not bar a petition filed on the day preceding the contract's execution [6] regardless of the employer's lack of knowledge.[7] In applying these rules, the cutoff time is midnight even though a contract signed after midnight is the result of continuous bargaining.

A third change which the Board has decided to make relates to when a petition will be considered prematurely filed. Henceforth, where there is a subsisting contract, a petition filed more than 150 days before the terminal date of a contract will be regarded as premature and will be dismissed unless a hearing is directed despite the prematurity of the petition and the Board's decision issues on or after the 90th day preceding the expiration date of the contract.[8] Such a hearing on an otherwise premature petition will be directed only if an investigation conducted on the basis of information furnished by the petitioner establishes reasonable grounds for believing that the existing contract is not a bar for some reason other than timeliness, such as schism, defunctness, illegal union security, etc.[9]

The Board considers the establishment of a specific period for the timely filing of a petition desirable because it will preserve as much time as possible during the life of a contract free from the disruption caused by organizational activities. Also, employees and any outside unions will be put on notice of the earliest time for the filing of a petition. This will create a guide as to the appropriate time to organize for, and seek a change of, representatives and, since there will be little

[5] See *Acme Brewing Company,* 72 NLRB 1005; *Chicago Bridge & Iron Company,* 88 NLRB 402, and similar cases.

[6] The old rule that an initial contract or a contract executed after the expiration of a prior contract does not bar an election if a petition is filed with the Board before (a) the execution date of the contract where the contract is effective immediately or retroactively; or (b) the effective date of the contract where the contract goes into effect at some time subsequent to execution, remains unchanged.

[7] *Anheuser-Busch, Inc., et al.,* 116 NLRB 186, is hereby overruled insofar as it is inconsistent herewith.

[8] To the extent that such cases as the following are inconsistent with this rule, they are hereby overruled: *Home Curtain Corp.,* 111 NLRB 1253; *General Motors Corporation, Chevrolet Motor Division,* 111 NLRB 1238; *Lewis Engineering & Manufacturing Company,* 100 NLRB 1353; *Stremel Bros. Manufacturing Company,* 89 NLRB 1404.

[9] The 150-day period will not affect the present seasonal industry rule. See *South Puerto Rico Sugar Co., d/b/a Central Guanica,* 100 NLRB 1309.

desire to engage in organizational activities much before the time when a petition will be accepted, it should also provide longer periods of stability. Finally, from an administrative viewpoint, the establishment of a definite period will have the salutary effect of enabling the Regional Offices, by obtaining a limited amount of information, to dismiss prematurely filed petitions, thus preventing a large percentage of such cases from being processed until an appropriate time.

A fourth change which the Board has decided to make is the establishment of a 60-day insulated period immediately preceding and including the expiration date of an existing contract, whether or not it contains an automatic renewal clause and regardless of the period provided for in such clause, during which the parties may negotiate and execute a new or amended agreement without the intrusion of a rival petition.[10] All petitions filed more than 60 days but not over 150 days before the terminal date of any contract will be timely. A petition filed during the 60-day insulated period will be dismissed as untimely, regardless of any conduct of the parties during that 60-day period. If the contract contains no automatic renewal clause or the parties have forestalled automatic renewal and no new or amended agreement has been executed within the 60-day period, a petition will be timely if filed after the terminal date of the old contract and before the execution or effective date of any new contract, whichever is later. However, a petition filed subsequent to the 60-day insulated period, but on or after the effective date of a contract executed within that 60-day period, will be untimely. The foregoing will apply to any contract with a fixed term whether or not it contains an automatic renewal clause and regardless of the period specified therein for automatic renewal. The 60-day insulated period will not change the automatic renewal date specified in the contract or make fixed-term-only contracts automatically renewable. Where the contract is one of "unreasonable duration," the insulated period will be the last 60 days of the reasonable period. If the automatic renewal clause specifices a period other than 60 days, the parties thereto will be bound by their own agreement for purposes of forestalling renewal, but the timeliness of a petition will be keyed to the 60-day period.[11] Of course, the date on which a petition is received by the Regional Office of the Board will be controlling for purposes of determining its timeliness in relation to either the 60-day insulated period, the 150-day rule for the filing of a petition, and the execution or the effective date of a contract.[12]

[10] *De Soto Creamery and Produce Company*, 94 NLRB 1627, and *Robertson Brothers Department Store, Inc*, 97 NLRB 258, are hereby overruled only to the extent that they are inconsistent herewith.

[11] *American Factors, Ltd. (Hilo Branch), et al.*, 104 NLRB 199; *Chapman Valve Manufacturing Company*, 40 NLRB 800, and similar cases are hereby overruled to the extent that they are inconsistent with this new rule.

[12] When amendment of a petition or other circumstances bring into issue which of two or more dates should be considered as the filing date, the rules for determining this issue remain unchanged. Thus, the filing date of the original petition is controlling (1) where

The Board believes the 60-day insulated period desirable for several reasons It will give rival unions a definite time-guide as to when to organize, and employees will know when to seek a change in representatives if they so desire Thus, it will avoid as much disruption of labor relations as possible during a contract term All potential petitioners will be required to have their petitions on file at least 61 days before the terminal date of the contract or run the risk that a contract executed during the 60-day insulated period will prevent another opportunity to file for the new contract's reasonable term It will also prevent the threat of overhanging rivalry and uncertainty during the bargaining period, and will eliminate the possibility for employees to wait and see how bargaining is proceeding and use another union as a threat to force their current representative into unreasonable demands

Under the previous rules, if the parties did not forestall renewal of their contract, a petitioner was obligated to take appropriate action before the automatic renewal date But if the parties gave notice forestalling renewal, a petitioner obtained additional time in which to file, thus enabling it to intrude into the bargaining relationship merely because the parties were attempting to perform their bargaining obligations The Board finds no particular merit in extending a rival union's opportunity merely because the parties are attempting to perform their statutory duty The question of whether or not automatic renewal of a contract has been forestalled should be considered only after the parties have failed to execute a new agreement during the 60-day insulated period Further, the creation of the 60-day insulated period and the requirement that rival petitions be on file prior thereto without regard to whether the parties have forestalled automatic renewal will eliminate in many cases the necessity of taking evidence and weighing the actions of the parties with respect to their contract

The Board's premature-extension doctrine will be affected only to the extent that a prematurely extended contract will not bar an election if the petition is filed over 60 but not more than 150 days before the terminal date of the original contract Thus, a contract will continue to be considered prematurely extended if during its term the contracting parties execute an amendment thereto or a new contract which contains a later terminal date than that of the existing contract, except when executed (1) during the 60-day insulated period preceding the terminal date of the old contract, [13] (2) after the terminal

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it is later amended, if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered, and (2) where a favorable ruling is made on a petitioner's appeal from a Regional Director's dismissal of a petition, or a motion for reconsideration of a Board decision

[13] In this respect the rules of such cases as *Republic Steel Corporation*, 84 NLRB 483, and *De Soto Creamery*, footnote 10, *supra*, are hereby modified

date of the old contract if notice by one of the parties forestalled its automatic renewal or it contained no renewal provision; or (3) at a time when the existing contract would not have barred an election because of other contract-bar rules.[14]

Finally, the Board has decided to make several substantial revisions in the area concerned with provisions for change in a contract and the effect of the conduct of the contracting parties. Thus, an automatically renewable contract between an incumbent union and an employer will not bar an election based upon a petition filed after its expiration date, but before execution of a new contract, if renewal has been forestalled and the parties have failed to execute an agreement within the 60-day insulated period.[15] Any notice of a desire to negotiate changes in a contract received by the other party thereto immediately preceding the automatic renewal date provided for in the contract will prevent its renewal for contract bar purposes, despite provision or agreement for its continuation during negotiations, and regardless of the form of the notice.[16]

Further, the Board has decided to eliminate its present rule that a party receiving a late notice under the automatic renewal clause may, by conduct with respect thereto, waive its belatedness, thereby having the contract treated as though timely notice had been given.[17] An untimely notice will, instead, be treated merely as a request for modification by mutual assent unless the parties thereafter clearly terminate the contract. Even though the parties terminate their contract after a late notice, the 60-day insulated period preceding its normal terminal date will apply.

A written agreement which reinstates the old automatically renewable contract will be treated as a new contract. However, if the parties actually terminate the contract and fail to execute a new agreement within the protected period, the contract will be treated in the same manner as one for a fixed term only or one in which the parties had forestalled renewal. The question of whether the parties had actually terminated their contract after a late notice will arise only on a petition filed after the 60-day insulated period, where the parties have failed to execute an agreement either within that period or before the date of filing.

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[14] An example of such a rule would be where a contract had been in effect for its reasonable term. See *Cushman's Sons, Inc.*, 88 NLRB 121.

[15] However, the rule that where the administration of a contract has been abandoned, it cannot automatically renew for contract bar purposes, remains intact.

[16] The old rule is still applicable that the effectiveness of timely notice to forestall automatic renewal is not changed by inaction of the parties thereafter, even though the contract required certain action within a specified period; rejection of the notice; or withdrawal of the notice.

[17] *Carter's Ink Company*, 109 NLRB 1042; *Superior Sleeprite Corporation*, 106 NLRB 228; *Wisconsin Telephone Company*, 65 NLRB 368, and similar cases, are reversed in this respect.

Elimination of the waiver aspect of the present rule on untimely notice is regarded as desirable because the 60-day insulated period procedure alone eliminates a substantial portion of the situations where the issue would arise and its remaining value is questionable when weighed against the amount of evidence required in presentation and evaluation to establish the existence of a waiver.

Notice to modify or actual modification of substantive provisions of a contract by the parties during its term, whether or not the contract contains a modification clause and regardless of the scope of any such clause, will not remove the contract as a bar to an election based upon an otherwise prematurely filed petition.[18]

When a contract contains separate modification and automatic renewal clauses each of which provides for notification at approximately the automatic renewal date, or the modification clause provides for notification at any time and notice is given shortly before the automatic renewal date of the contract, the notice will be treated as one to forestall automatic renewal.[19] The only exception will be where the contract specifically provides that if notice pursuant to the modification provision is given the contract will nevertheless renew, and the notice is specifically made pursuant to such a modification clause.[20]

The treatment of all notices given at approximately the renewal period as notices to forestall automatic renewal, unless very strict provisos are met, will practically eliminate the very difficult area of contract bar rules covering coterminus modification and termination clauses and will render unnecessary evaluation of the contract clause, the type of notice given, and the conduct of the parties with respect thereto, which are frequently inconsistent and create difficulties in determining their effect upon contract bar.[21]

A midterm modification provision, regardless of its scope, will not remove a contract as a bar unless the parties actually terminate the contract. The Board believes it best to permit the parties to modify or amend any of the substantive provisions of their contract, in accordance with any modification clause—whether broad or narrow in scope—or by mutual assent at any time during its term. Thus, no midterm modification clause, nor any action pursuant thereto short of actual termination, will remove a contract as a bar, except where a notice is given immediately prior to the automatic renewal date of

[18] See *Western Electric Company, Incorporated,* 94 NLRB 54.

[19] To the extent that such cases as the following are inconsistent with this rule, they are hereby overruled: *Helmco, Inc.*, 114 NLRB 1585; *Griffith Rubber Mills,* 114 NLRB 712; *Eagle Signal Corporation,* 111 NLRB 1006.

[20] *Mallinckrodt Chemical Works,* 114 NLRB 187; *Michigan Gear & Engineering Company,* 114 NLRB 208.

[21] See, for example, *Union Bag & Paper Corporation,* 110 NLRB 1631. Also, see cases cited in footnote 19, *supra.*

such a contract. Modification clauses containing provision for unilateral termination by notice if agreement is not reach or permitting a strike or lockout in support of any demand made during the modification negotiations and the right to terminate thereafter, will be treated in the same manner as any other request for midterm modification and will not remove the contract as a bar.[22]

By treating midterm modification of an agreement in this manner the Board anticipates the elimination of the practice of scrutinizing and classifying the scope of a modification clause, the breadth of any notice given, and the actions of the parties in order to evaluate the intended effect of a notice or clause and then basing a contract-bar determination upon the resulting evaluation.[23] All the parties will need to prove and the Board will need to determine is whether the contract has in fact been terminated. When parties include in their fixed-term contract a clause requiring certain steps such as negotiations, deadlock, and/or strike or lockout as conditions precedent to termination, the contract will continue to be a bar regardless of which of its conditions short of termination has been met. It is believed that to hold this type of contract not a bar is to disregard the significance of these intermediate steps. For, by including a clause containing such conditions precedent to termination, it is clear that the parties intend and expect that their bargaining relationship will continue for the full specified period, and that the termination part of the clause is one to be exercised, if at all, as a last resort. It should not be assumed that because one or more of the conditions precedent have been met the parties will exercise their right to terminate the contracts. On the contrary, having engaged in bargaining sessions which are frequently long and arduous, and having finally arrived at an agreement, the parties in all probability would be unwilling, during midterm modification negotiations, to abandon their contract thereby sacrificing the mutual benefits achieved. Such a contract is as effective in stabilizing labor relations, until the parties actually elect to terminate, as any other contract. For, even without such a provision, a contract may be terminated by mutual assent of the parties.

Finally, a contract which has been terminated at a time other than during the 60-day insulated period will not bar a petition. A contract will be deemed terminated if it is terminated by mutual assent or pursuant to its terms, or if a notice of termination or cancellation is given because of breach of a basic contract provision such as a no-strike clause.

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[22] Such cases as *Ketchikan Pulp Company*, 115 NLRB 279, and *General Electric Company*, 108 NLRB 1290, are hereby overruled.

[23] See, for example, *Anaconda Copper Mining Company*, 112 NLRB 1347; *Dick Brothers, Inc*, 107 NLRB 1054.

We turn now to the arguments and evidence presented in the instant proceeding. As noted above, the Intervenor alleges that its notice of November 7, 1957, was one merely requesting modification and did not forestall the automatic renewal of the existing contract.

In support of its position the Intervenor points to the contractual provision permitting modification or termination contained in the duration and renewal clause. It claims that this clause permits the election of modification or termination and that by giving a modification notice it elected not to forestall renewal of the contract. While it is true that the notice given was couched in terms of a request for modification, the duration clause in the contract made renewal contingent upon an absence of notice either to modify or terminate. Thus, by its specific language a modification notice under this provision forestalled renewal as effectively as a termination notice. In these circumstances, even under the old rules, because of the wording of the contract clause, the notice could not be treated as merely one for modification. And, under the new rules, as the notice was given near the renewal date of the contract, the notice must be treated as having forestalled automatic renewal. For the modification clause in the contract does not specifically provide that if notice pursuant thereto is given the contract will nevertheless renew.

As indicated above, the notice here was given more than 60 days before the contract's stated termination date. However, the contract itself did not specify a *Mill B* date for such notice. Thus, under the new rules the parties would have been bound by the terms of their contract for notice purposes and could have served notice at any time up to the termination date of their contract. Since no petition was on file before the 60th day preceding the contract termination date they would have been protected for the entire insulated period during which they could have signed a contract. The question of whether they had in fact forestalled renewal of their contract arises only because they failed to reach an agreement and execute a contract before the expiration of the insulated period and because a petition was filed thereafter. Had they failed to give notice before the renewal date of the contract but given notice and engaged in negotiations thereafter, such late notice would have been treated under the revised policy in the same manner as a midterm modification notice. Thus, were the notice herein to qualify as a midterm modification notice, neither the ensuing work stoppage, the breadth of the notice, the notice clause, nor the negotiations of the parties would have had any effect upon the issue of contract bar, unless there was actual termination of the contract.

We have concluded that the notice by the Intervenor forestalled renewal of the contract. Since under our new rules the *X-Ray* doctrine has been eliminated, the question of whether the petition is

timely depends upon whether the memorandum agreement signed before the filing of the petition would qualify as a bar. Obviously resolution of this issue requires an examination of the memorandum agreement. For if we were to find that the document was an inadequate or incomplete contract, it would not bar this petition. On the other hand, were we to find that the memorandum agreement in itself was a complete contract or constituted an amendment and reinstatement of the old contract, the petition would have to be dismissed. After carefully reading the entire memorandum agreement, we are satisfied—particularly in light of its references to the old contract and the changes of specific provisions in that contract effected by the memorandum agreement—that the memorandum agreement was an amendment of the old contract.

The amendment, which modified the existing contract and placed certain provisions thereof into effect immediately and other provisions retroactively, was signed and ratified by the union membership on January 20, 1958. The petition, although mailed on the 20th, was not received in the Board's Regional Office until January 21, 1958. Thus, there is no question but that the contract as amended effectively reinstated the old contract as of the date the amendment was finalized, i.e., executed and ratified, since ratification was required. It therefore, under the revised policy, bars this proceeding.

The Petitioner, in oral argument before the Board, favored simplified and more specific rules for the application of the contract bar policy. However, it recognized that application of any changes to the instant case might impair its position. The Petitioner therefore requested the Board to apply such changes *in futuro*.

We recognize and appreciate the sincerity and objectivity of Petitioner in giving its evaluation of possible revisions in the application of the contract bar policy. It is particularly apparent that Petitioner's contribution in this respect was made without regard to the narrow confines of self-interest dictated by the circumstances of this particular case. However, in establishing revisions of precedent there is always the likelihood that such revisions will bring about a different result in some pending proceeding than would have obtained under a prior policy or procedure. This is true not only of the case in which such revisions are first announced and applied, but also with respect to any other case which has not yet been decided, because it has not reached the Board's level or is at one of the other stages of the administrative process such as the hearing. Thus, to adopt these revisions of contract-bar policy and then allow the instant proceeding as an exception without permitting a similar exception to all pending cases would be inequitable. To establish an *in futuro* rule for all pending cases would create an administrative monstrosity. The judicial practice of applying each pronouncement of a rule of law to the case in

which the issue arises and to all pending cases in whatever stage is traditional and, we believe, the wiser course to follow. Accordingly, we deny the Petitioner's request that any revised policy not be applied to the instant case.

In view of the foregoing, and particularly our finding that the petition was filed after the contract was amended, we find that the contract for the period January 10, 1958, to March 31, 1959, constitutes a bar to this proceeding. Therefore, we find 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. Accordingly, we shall dismiss the petition filed herein.

[The Board dismissed the petition.]

Custom Molders of P. R. and Shaw-Harrison Corporation, Petitioner *and* United Rubber, Cork, Linoleum and Plastic Workers of America, AFL–CIO. *Case No. 24–RM–50. September 23, 1958*

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election entered into by the parties on March 20, 1958, an election by secret ballot was conducted on April 3, 1958, under the direction and supervision of the Regional Director for the Twenty-fourth Region, among employees in the appropriate unit as set forth in said stipulation. Upon the conclusion of the election, each of the parties was served with a tally of ballots which showed that of approximately 322 eligible voters, 291 cast ballots, of which 42 were for and 227 were against the Union. Nineteen ballots were challenged, a number insufficient to affect the results of the election. Three void ballots were cast.

On April 10, 1958, the Union filed timely objections to the conduct of the election. On July 2, 1958, the Regional Director, after investigation, issued his report and recommendations on objections to election, recommending that the objections be overruled, but that the election be set aside because of the Employer's violation of the Board's *Allied Electric Products* rule.[1] On July 21, 1958, the Employer filed timely exceptions to the Regional Director's report.

The Board has considered the objections of the Union, the Regional Director's report,[2] the Employer's exceptions, and the entire record in the case, and finds:

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[1] *Allied Electric Products, Inc*, 109 NLRB 1270

[2] As no exceptions have been taken to the Regional Director's recommendations overruling the Union's objections to the conduct of the election, those recommendations are hereby adopted.