Appalachian Shale Products Co. *and* United Brick and Clay Workers of America, AFL-CIO, Petitioner. *Case No. 5-RC-2393. October 1, 1958*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lawrence S. Wescott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

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

2. The labor organizations here involved claim to represent certain employees of the Employer.[1]

3. The question concerning representation:

The Company has recognized the Intervenor as the bargaining representative of its employees since 1952. On January 1, 1956, the Company and the Intervenor entered into a 2-year contract expiring December 31, 1957, and containing a provision that it was to be effective from year to year thereafter unless at least 60 days prior to any contract expiration date either party notifies the other in writing of its decision to amend, modify, or terminate the agreement. On October 28, 1957, the Intervenor notified the Company in writing that it wished to reopen the contract. On December 16, 1957, representatives of the Company and the Intervenor met for the purpose of negotiating changes. According to the record, the parties agreed upon the changes but prepared no draft of a contract, and that evening Intervenor official Price, using his notes, presented the changes to the membership at a meeting and the members voted to ratify. After the meeting, Price notified Company Vice President Sells that the membership voted to ratify the agreement and that a contract could be drafted. The following day, December 17, Sells wrote Company counsel setting forth the changes to be embodied in the contract. The record shows, however, that a draft of the contract was not completed or signed until December 30, 1957.

In the meantime, the Petitioner's business representative, informed by his International office on December 18 that the employees were interested in joining the Petitioner, met with several of them on December 21. Learning from them of the Company's negotiations with the Intervenor, he signed up 22 employees on that occasion. On December 23, the Petitioner wrote the Company demanding recogni-

[1] United Construction Workers, Division of District 50, United Mine Workers of America, herein called Intervenor, intervened in this proceeding on the basis of an alleged contractual interest.

tion as the bargaining representative of the employees here involved. On December 26, the present petition was filed.

The Petitioner contends that the contract cannot serve as a bar because its petition was filed prior to the date on which the contract was actually signed. The Company and the Intervenor contend that the contract does serve as a bar because there had been a meeting of the minds of the parties prior to the date of the filing of the petition and all that remained was the ministerial act of signing the contract.

The Board has been reexamining its contract bar rules with a view toward simplifying and clarifying their application wherever feasible in the interest of more expeditious disposition of representation cases and of achieving a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives. As part of this process of reappraisal, the Board has recently issued four lead cases[2] which set forth certain major revisions and clarifications in the rules applicable to various significant aspects of contract bar policy. These major areas include duration of contract, the representative status of the contracting union, rival claims and petitions, provisions for change in contracts and the effect of conduct of the contracting parties, and unlawful union security and similar provisions. Other areas of contract bar policy remain, including adequacy of contract. This area, in the Board's opinion, does not require the major revisions and clarifications of the type found necessary in the four lead cases already issued. Although certain changes must be made, they are of the type not infrequently made in normal representation case handling. Thus, the instant case furnishes an appropriate vehicle for the relatively minor revisions in the field of adequacy of contract.

It is well established that oral agreements cannot serve as a bar.[3] It is equally well established that contracts not signed before the filing of a petition cannot serve as a bar.[4] These rules are simple, easily understood, and require no change. In the application of the second of these rules, however, a problem has arisen that merits reconsideration. Thus, although a contract is signed by the parties after the filing of a petition, it has been held to be a bar where the parties considered the agreement properly concluded and put into effect some of its important provisions.[5] The Board has reexamined its prior decisions in this respect and has concluded that the effectiveness of its contract bar policies can best be served by eliminating this exception to the rule that a contract not signed before the filing of a petition cannot

[2] *Hershey Chocolate Corporation*, 121 NLRB 901; *Keystone Coat, Apron & Towel Supply Company, et al*, 121 NLRB 880; *Deluxe Metal Furniture Company*, 121 NLRB 995; and *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990.

[3] *J. Sullivan & Sons Mfg Corp.*, 105 NLRB 549.

[4] *Mt. Clemens Metal Products Company*, 110 NLRB 931.

[5] See, for example, *Oswego Falls Corp.*, 110 NLRB 621.

serve as a bar. It feels that after more than 20 years of contract bar policy, the parties should be expected to adhere to this relatively simple requirement, and that the creation of exceptions such as this only serve to render unduly complex a field that should not have become so involved. Accordingly, the Board adopts the rule that a contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.[6]

The Board recognizes that on occasion contracts are not embodied in formal documents and that the parties, for reasons best known to them, execute and sign an informal document which nonetheless contains substantial terms and conditions of employment. Sometimes the agreement is arrived at by an exchange of a written proposal and a written acceptance, both signed. The rule stated above in no way diminishes the effectiveness of such contracts as a bar; it simply makes clear the necessity for signing the contracts or documents constituting the agreement of the parties.

Related to the requirements for proper execution of contracts is the question of prior ratification by the union membership. The general rule is that where ratification is made a condition precedent to contract validity, failure to achieve timely ratification of the contract, i.e., before the filing of a petition, will remove it as a bar.[7] The Board finds no necessity for revising this general rule. However, the rule has been applied not only to contracts which by their own express terms create such a condition precedent but also to situations in which the contract was silent as to prior ratification but such a condition precedent was spelled out from an alleged understanding of the parties at or about the time of the contract negotiations.[8] The latter has resulted in conflicting testimony and protracted hearings, creating contested factual issues for the Board to resolve. The Board, in reexamining this extension of the general rule, is of the opinion that only where the written contract itself makes ratification a condition precedent to contractural validity shall the contract be no bar until ratified. This change is consistent with the Board's view that every effort should be made to eliminate the litigation of factual issues such as these in representation cases and to give greater weight to the language of the contract itself. For like reasons, the Board feels that in all cases where the question of prior ratification depends

[6] *Oswego Falls Corp., supra; Natona Mills,* 112 NLRB 236, and other cases similarly decided, to the extent that they are inconsistent herewith, are hereby overruled. No change is made in the rule that a written contract which is orally extended will not constitute a bar or in the rule that an automatic renewal of a written contract will not be forestalled by oral notice.

[7] See, for example, *Westinghouse Electric Corp., Small Motor Division,* 111 NLRB 497.

[8] See, for example, *Roddis Plywood & Door Company, Inc.,* 84 NLRB 310.

upon an interpretation of a provision for prior ratification in a Union's constitution or bylaws, as distinguished from the incorporation of an express provision in the contract, the contract will constitute a bar. Accordingly, the rule for prior ratification is restated as follows: Where ratification is a condition precedent to contractural validity by express contractural provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar.[9]

Another related subject is the requirement, for contract bar purposes, that to bar a petition a collective-bargaining agreement must contain substantial terms and conditions of employment.[10] This is a general rule which the Board affirms. In reexamining the application of this general rule, however, the Board finds that an exception has developed which tends to lessen its effectiveness. Thus, an agreement limited to wages only, and containing no other terms and conditions of employment has been upheld as a bar.[11] The Board has reconsidered this exception, and finds that it is inconsistent with the basic premise that only a contract embodying the substantial terms and conditions of employment tends to stabilize the bargaining relationship. Failure to make such provisions leaves the parties in a continuous state of uncertainty with respect to material and pertinent aspects of their labor relations during the lifetime of the agreement, with the direct consequence of rendering the contract incapable of providing the stability contemplated by the Act. The Board is mindful of the fact that at times the execution of a contract such as one limited to wages only or to some terms which could not be deemed substantial may serve at least as a temporary expedient in resolving a conflict. Experience demonstrates, however, that real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems. It is felt that objectivity based on known standards should replace the uncertainty of subjective reasons and explanations, and that the elimination of this exception will provide a surer and more predictable policy to guide those who come before the Board. Accordingly the rule is restated as follows: to serve as a bar, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; it will not constitute a bar if it

[9] *Roddis Plywood & Door Company, supra,* and other cases similarly decided, to the extent they are inconsistent herewith, are hereby overruled.

[10] See, for example, *Bethlehem Steel Corporation,* 95 NLRB 1508.

[11] *Nash-Kelvinator Corporation,* 110 NLRB 447.

is limited to wages only, or to one or several provisions not deemed substantial.[12]

There are several other areas dealing with adequacy of contract for contract-bar purposes but as these do not require any revision, they can be restated here without amplification. Thus, a master agreement is no bar to an election at one of the employer's plants where by its terms it is not effective until a local agreement has been completed or the inclusion of the plant has been negotiated by the parties as required by the master agreement, and a petition is filed before these events occur. However, where the master agreement is found to be the basic agreement and the local supplement merely serves to fill out its terms as to certain local conditions, it will constitute a bar. A contract for members only does not operate as a bar. To serve as a bar, a contract must clearly by its terms encompass the employees sought in the petition. Finally, the contract asserted as a bar must embrace an appropriate unit.

We turn now to the facts of the instant case. As noted above, it is clear that although the petition was filed on December 26, 1957, the contract between the Company and the Intervenor was not executed and signed until December 30, 1957. Under the rule set forth above with respect to a contract not signed prior to the filing of a petition, the contract would not have been effective as a bar. However, one of the major changes in the contract bar rules—a change that is perhaps one of the most significant in the Board's current revision of its contract bar policies—is the establishment of a 60-day insulated period. Under that rule, a 60-day period immediately preceding the expiration date of an existing contract is established during which the parties may negotiate and execute a new or amended agreement without the intrusion of a rival petition.[13] A petition filed during the 60-day insulated period is subject to dismissal as untimely, regardless of any conduct of the parties during that 60-day period. As indicated above, the petition in the instant case was filed on December 26, 1957, which was during the 60-day insulated period. Under the circumstances, and for the reasons set forth in the *Deluxe* case, the petition is untimely.

It is worth noting that the facts of the instant case illustrate graphically the effectiveness of the 60-day insulated period in furthering the aims of collective bargaining during a period when it is most vitally needed, and in preventing, as we pointed out in *Deluxe*, "the threat of overhanging rivalry and uncertainty during the bargaining period." By the same token, as is indeed made clear in this very case, the establishment of the insulated period appreciably reduces

[12] To the extent that they are inconsistent herewith, *Nash-Kelvinator Corporation, supra,* and other cases similarly decided, are hereby overruled.

[13] *Deluxe Metal Furniture Company, supra.*

the number of instances in which the Board will be confronted, as it was here, with the problem created by a contract signed after a petition is filed.

In view of our finding that the petition was filed during the 60-day insulated period, 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.]

General Extrusion Company, Inc., General Bronze Alwintite Products Corp.[1] *and* Local 411, Metal, Precision, Electronics and Production Workers, N. I. U. C., Petitioner. *Case No. 2-RC-9286. October 1, 1958*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Milton A. Shaham, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

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

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

3. The question concerning representation:

The Employer and the Intervenor, Warehouse & Processing Employees Union Local 258 (Ind.), contend that an existing collective-bargaining agreement covering all the Employer's employees at Whitestone, New York, effective from November 1, 1957, until November 1, 1959, is a bar to this proceeding. The Petitioner takes the position that the contract is not a bar because it was executed at a time when the Employer did not employ a substantial and representative work force at its Whitestone operations.

General Extrusion Company, Inc., commenced operations in July 1957 at its Whitestone plant. General Extrusion and General Bronze Alwintite Products Corp., subsidiaries of General Bronze Corporation, are engaged in the interrelated production and distribution of aluminum storm doors and windows, and other metal products. General Extrusion produces the extruded metal, which after fabrica-

[1] The name of the Employer appears as corrected at the hearing.