General Cable Corporation *and* United Electrical, Radio & Machine Workers of America (UE), Petitioner. *Case No. 20–RC–5002. November 19, 1962*

DECISION ON REVIEW

On June 4, 1962, the Regional Director for the Twentieth Region issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the Employer and Intervenor, International Brotherhood of Electrical Workers, AFL–CIO, in accordance with Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, filed with the Board timely requests for review on the ground that there were compelling reasons for reconsideration of Board policy with respect to the duration of contracts as bars to petitions. Intervenor, International Brotherhood of Electrical Workers, Local No. 100, AFL–CIO, joined in the requests. The Petitioner filed opposition.

The Board by telegraphic order dated October 11, 1962, granted the requests for review in this and two other related proceedings, General Cable Corporation, Case No. 12–RC–1446, and Westinghouse Electric Corporation, Case No. 5–RC–3915, involving the same issue. Thereafter, briefs in these proceedings were filed by the respective parties: General Cable Corporation; Westinghouse Electric Corporation; United Electrical, Radio and Machine Workers of America (UE); International Brotherhood of Electrical Workers, AFL–CIO, and its Local No. 100; International Union of Electrical, Radio and Machine Workers, AFL–CIO, and its Local Union No. 152; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Briefs *amici curiae* were received from various organizations.[1] In response to requests therefor, the Board on November 9, 1962, heard oral argument by parties to the proceedings and organizations filing briefs *amici*.

The Board has considered the entire record in this proceeding, including the aforementioned briefs and statements, and the oral arguments and finds:

The Employer and Intervenor, International Brotherhood of Electrical Workers, Local No. 100, AFL–CIO, are parties to a contract effective for 3 years from June 14, 1960, to June 14, 1963, which they

[1] Briefs or comments were received from American Federation of Labor and Congress of Industrial Organizations; Industrial Union Department, AFL–CIO; District 50, United Mine Workers of America; Communications Workers of America; Alliance of Independent Telephone Unions, National Electrical Manufacturers Association; Sylvania Electric Products, Inc; Colonial Stores Incorporated; Kentile, Inc; Middlesboro Tanning Company of Delaware, Inc; American Bosch Arma Corporation; Commerce and Industry Association of New York, Inc.; New York Chamber of Commerce; Electronic Industries Association; and National Independent Union Council.

urge is a bar to the petition filed in the instant proceeding on April 13, 1962. The Regional Director found that the contract was not a bar on the ground that, in accordance with existing Board policy, as enunciated in *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990, a contract will constitute a bar for only so much of its term as does not exceed 2 years and the petition was timely filed with respect to the second anniversary date of the contract. In their requests, the Employer and Intervenor urge the Board to reconsider *Pacific Coast* and to adopt a new rule whereby collective-bargaining contracts will be bars to petitions for 3 rather than 2 years.

Twelve years after the National Labor Relations Act became law the Board announced its basic 2-year contract-bar rule, discarding in the interest of stability of labor relations a more limited 1-year rule.[2] The Board held that a 2-year agreement is reasonable as to term and that employees will not be unduly restricted in their right to freedom of choice of representatives, if, during the 2-year period, the existing collective-bargaining relationship, to which the contract brings stability and a charter of voluntarily made law for the defined industrial community, were permitted to continue undisturbed.

The principles that came to be applied to longer agreements were less absolute, although such agreements were regarded as bars to an election for their first 2 years.[3] They were not considered as bars for the excess period unless their duration accorded with the customary term of contracts in the industry in which the employer concerned was engaged.[4] Later the principle relating to the excess over 2 years was modified so as to allow them to preclude an election for their entire term if a substantial segment of the particular industry involved was covered by agreements of like duration.[5]

In 1958, when the Board reappraised all its contract-bar principles, it reaffirmed the basic 2-year rule, eliminating entirely the peripheral doctrine of the excess to insure certain and predictable intervals when representation petitions could be filed, and to overcome administrative difficulties it had encountered.[6] As the Board then stated the rule, a contract having a fixed term or duration was to constitute a bar to an election for so much of its term as did not exceed 2 years; if its term or duration lasted for more than 2 years, it was to be deemed for bar purposes a 2-year contract, even though there were agreements of similar duration encompassing a substantial part of the specific in-

[2] *Reed Roller Bit Company*, 72 NLRB 927 (1947).

[3] *Puritan Ice Company*, 74 NLRB 1311 (1947)

[4] *Ibid; Ansco, A Division of General Aniline & Film Corporation*, 79 NLRB 79 (1948); *The Paraffine Companies, Inc.*, 85 NLRB 325 (1949); *Cushman's Sons, Inc*, 88 NLRB 121 (1950).

[5] *General Motors Corporation Detroit Transmission Division*, 102 NLRB 1140 (1953); *Allis Chalmers Manufacturing Company (West Allis Plant)*, 102 NLRB 1135 (1953); *Bendix Products Division, Bendix Aviation Corporation*, 102 NLRB 1137 (1953).

[6] *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990 (1958).

dustry concerned. From 1958 until now this has been our governing precedent.

Today, a decade and a half following the establishment of the Board's basic 2-year contract-bar rule, we enlarge the 2-year period to 3, making no other changes. Contracts of definite duration for terms up to 3 years will bar an election for their entire period; contracts having longer fixed terms will be treated for bar purposes as 3-year agreements and will preclude an election for only their initial 3 years.[7] All other contract-bar rules, whether related or unrelated to the subject of contract term, remain unaltered; our new 3-year rule is to be read in harmony with them.[8]

In adopting a 3-year rule we have heeded the appeals for a more extended contract-bar period presented in oral arguments, letters, telegrams, memorandums, and briefs by the overwhelming majority of labor and management representatives. Indeed, this substantially unified stand of both labor and management has been a most important consideration in arriving at our decision. But there are additional factors we have found compelling and upon which we have relied. We are mindful that the 3-year rule will delay for 1 year the time when specific groups of employees desiring an election will be afforded an opportunity to exercise their right under the Act freely to choose bargaining representatives. And if, as some have urged, we were at present to cause further delay by expanding the bar period to more than 3 years, stability of industrial relations would in our judgment be so heavily weighted against employee freedom of choice as to create an inequitable imbalance. We think, however, that an added delay of but 1 year is relatively slight and fully warranted when viewed in the light of countervailing considerations, including the necessity to introduce insofar as our contract-bar rules may do so, a greater measure of stability of labor relations into our industrial communities as a whole to help stabilize in turn our present American economy.

Other elements offsetting the arguments against a further 1-year delay are recent developments in the labor movement,[9] in Federal

[7] Agreements of longer duration, as a majority of the Board has recently held, will, however, bar for their entire term an election sought by the contracting employer or the contracting certified union. *Montgomery Ward & Co., Incorporated,* 137 NLRB 346 (1962); *The Absorbent Cotton Company,* 137 NLRB 908 (1962). For the reason expressed in their dissents in these two cases, Members Rodgers and Leedom would deem such contract to be vulnerable to a petition by either of the contracting parties after the 3-year period

[8] See, e g, footnote 6, *supra.*

[9] At a convention held in December 1961 the AFL–CIO approved a comprehensive "Internal Disputes Plan," binding upon all its member unions (49 LRRM 64–67). In general terms the plan is a "no-raid" code designed to prohibit any AFL–CIO affiliate from competing for the representation rights gained by a coaffiliate that has developed a history of collective bargaining with the employer of the employees for whom it has been recognized as bargaining agent. Also, the code provides for sanctions against those violators, found guilty after hearing before an impartial umpire and the exhaustion of internal appeals,

labor legislation,[10] and in the labor law handed down by the Supreme Court,[11] all brought sharply into focus since the Board's 1958 determination, together with economic developments resulting from unemployment, the international setting, and technological changes, which tend to complicate and unsettle labor-management relations. Compositely, all these factors serve to stress the efficacy of collective agreements, the need to respect their provisions, the desirability of discouraging raids among unions, the wisdom of granting relief to employees to assist them in eradicating major causes of discontent arising within their own institutions and from their relations with their employers, and the imperative for long-range planning responsive to the public interest and free from any unnecessary threat of disruption.

The accommodation we have made in balancing the interest of employee freedom to choose representatives, and the interest of stability of industrial relations, is in the perspective of these conditions and events. All point to a climate of greater adherence to already chosen bargaining representatives, reliance on the agreed-upon law of existing contracts and recourse to remedies proffered within the framework of established relationships for the redress of asserted wrongs.

---

who decline to halt their raids. The AFL–CIO has already demonstrated that it is earnestly attempting to effectuate and enforce the provisions of the code, having recently imposed sanctions against an unremitting constituent found guilty after the conclusion of the hearing and appeal procedure (39 LA 373–374). See also 51 LRR 288.

[10] In 1959 the Congress passed the Landrum-Griffin Act, Titles I–VI, which offer union members remedial relief for undemocratic and corrupt union practices and permit them to improve and strengthen their own institutions from within. It is worth noting that Title IV relating to local union elections permits terms of offices up to 3 years

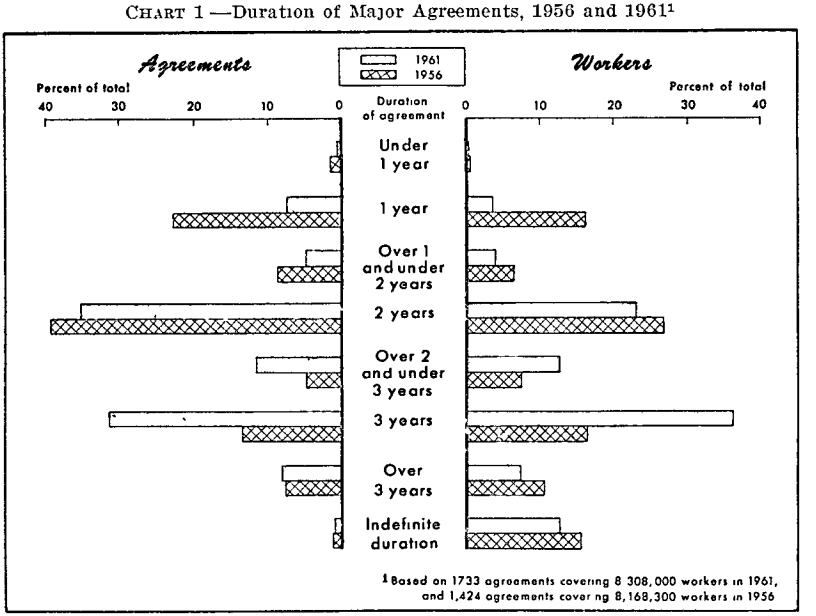
[11] By its interpretations of Section 301 of the Taft-Hartley Act, which treats with suits for violation of a contract between an employer and a labor organization representing employees in an industry affecting interstate commerce, the Supreme Court has fortified the labor agreement and the arbitral process in particular. Although the Supreme Court's 1957 decision in *Textile Workers Union of America, AFL–CIO* v. *Lincoln Mills of Alabama,* 353 U S. 448 (1957), was the first of such interpretations, not until its 1960 trilogy, *United Steelworkers of America* v *American Manufacturing Company,* 363 U.S. 564 (1960), *United Steelworkers of America* v. *Warrior and Gulf Navigation Company,* 363 U.S. 574 (1960), *United Steelworkers of America* v. *Enterprise Wheel and Car Corporation,* 363 U.S. 593 (1960), and later decisions, *Charles Dowd Box Co , Inc.* v *Courtney et al ,* 368 U S. 502 (1962), *Retail Clerks International Association, Local Unions Nos. 128 and 633* v. *Lion Dry Goods, Inc., et al.,* 369 U S. 17 (1962), *Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America* v *Lucas Flour Co ,* 369 U S. 95 (1962), did it become clear that labor-management contracts and agreed-upon arbitration provisions are a vital force throughout the United States All labor agreements envisaged by Section 301 have been held to be enforcible in both Federal and State courts And a corpus of Federal law, to be fashioned from the policy of our national labor laws as construed by the courts, has been ruled to be controlling in regard to substantive issues. Suits have been upheld by and against unions, as entities, surmounting a procedural hurdle that had existed under the common law of many States Moreover, the Supreme Court has adjured lower Federal and State courts not to decide the threshold issue of arbitrability by determining the merits of any dispute, and not to reverse on the merits any arbitration award insofar as it concerns the construction of any applicable contract. A far-flung system, embracing both our Federal and State courts, and governed by a unitary body of substantive law, now exists for the effective enforcement of labor agreements and the full implementation of that voluntarism of contracting parties that is reflected by the arbitration clauses they have adopted Grievance disputes subject to arbitration can now be forcefully yet peacefully aired and resolved.

Perhaps of greatest significance, we have also been persuaded from available figures by the continuing trend before and after 1958 toward agreements of more than 2 years' duration. This trend by 1961 reached the point where a majority of the contracts covering more than 1,000 employees in one or more separate units were for terms longer than 2 years; and of that majority, furthermore, the greater number of agreements were of 3 years' duration.[12] As our past 2-year rule has doubtlessly had some inhibiting effect on the execution of such long-term contracts, we regard these statistical facts, most of all the heavy concentration of 3-year agreements, as having especial import.

Nor do we believe that, considering all these factors and the Board's experience since 1958, the reasons which in that year gave the Board pause in enlarging the 2-year bar period [13] now constitute formidable

[12] Following is a chart prepared by the Division of Wages and Industrial Relations, Bureau of Labor Statistics, United States Department of Labor, appearing in Monthly Labor Review, October 1962, vol 85, No 10, at p 1140, as part of a study and report on "Major Union Contracts in the United States, 1961"

CHART 1.—Duration of Major Agreements, 1956 and 1961[1]



At pp 1140–1141, the study and report states: "The trend to long-term agreements (2 years or more), highlighted in the Bureau's 1956 study, was accentuated during the next 5 years (chart 1). In 1961, only 1 out of 8 major agreements, covering a smaller portion of workers, was negotiated for a term of less than 2 years (table 5). The prevalence of 2-year agreements also declined somewhat. A duration in excess of 2 years became, by 1961, the majority practice." The record in the instant proceeding, including the exhibits received in evidence, reflects the official 1956 percentages contained in the above chart and unofficial 1961 percentages confirmed by the official 1961 percentage shown in the chart.

[13] Specifically, the Board referred in 1958 to the termination of its "General Electric X-ray" and "Mid-Term Modification" principles, indicating that such action would substantially reduce the opportunity of employees to redesignate bargaining representatives,

deterrents to our formulation of a 3-year rule. In sum, we are convinced that, in the totality of the modern-day labor scene, there is ample justification for a 3-year rule and that such rule on balance will not seriously impair employee freedom of choice.

As our new rule does no more than postpone the appropriate time for an election, and for only 1 year, its immediate application will obviously not effect a final forfeiture of rights; nor, as we have indicated, could such action result in a detriment of consequence. In 1947, when the Board expanded the 1-year bar period, it applied its then newly enunciated 2-year principle to the proceedings pending before it for decision, which resulted in a dismissal of the petition.[14] Today we perceive no unusual circumstances or cogent reasons that would cause us to veer from that approach and limit application of the 3-year rule we have established solely to proceedings that are yet to be instituted or to contracts yet to be executed. All revisions of contract-bar rules consistently have been made effective to control disposition of the very cases in which the issue of policy change has arisen,[15] save for one situation.[16] But where, as in that unusual instance, agency case-handling, rather than changed conditions which affect equally pending and future proceedings and on which a new doctrine is predicated, would fortuitously result in postponing the exercise of rights for more than a minimal time, a showing has been made of such extraordinary circumstances as to require a departure from customary Board procedure. Clearly, that is not the situation we are confronted with here. For consideration stated once before

---

while a contract is in effect. But the Board's substitution as an election requirement of the filing of a petition before execution of a contract, for a preexecution naked claim followed within 10 days by the post-execution filing of a petition (the "General Electric X-ray" doctrine), received wide circulation soon after 1958 and has not to our knowledge impeded to any discernible degree those seeking an election who can actually raise a substantial question concerning representation by marshalling a sufficient showing of interest Furthermore, while the Board for good cause shut one door to an election by ending its "Mid-Term Modification" rule, there is no demonstrable evidence since 1958 that significant numbers of employees have desired an election about the time mid-term modifications have been negotiated.

[14] *Reed Roller Bit Company, supra.*

[15] *Boyd Leedom* v. *International Brotherhood of Electrical Workers Local Union No 108, AFL–CIO* (*General Cable Corp*), 278 F. 2d 237 (C.A.D.C). Our practices regarding the immediate or prospective application of rule modifications in other areas of the representation case field sometimes are governed by quite different considerations. When present application of doctrinal changes made in such sectors would produce undesirable confusion, only prospective application of new principles may be indicated See, e g., *The Ideal Electric and Manufacturing Company,* 134 NLRB 1275 (1962) ; *Goodyear Tire and Rubber Company,* 138 NLRB 453 (1962).

[16] *Leonard Wholesale Meats, Inc ,* 136 NLRB 1000 (1962). There we applied only prospectively our newly announced principle shortening the interval for the seasonable filing of a representation petition from 150 to 60 days to 90 to 60 days before the expiration of the reasonable term of a contract. Had we invoked the new 90 to 60 day rule in the proceedings before us for disposition, the petition in that case would have been dismissed and the petitioner concerned probably prevented for more than a brief period from commencing timely new representation proceedings, solely because this agency had held the petitioner's case beyond the next outside date (the 16th day preceding the expiration of the reasonable term of the particular contract in question) on which a new petition could have been seasonably filed. In other like cases, moreover, the petitioners involved might have been similarly affected.

on a similar occasion,[17] we deem it more prudent administrative practice to apply our new 3-year rule at once to the proceedings now before us for decision.

Turning now to the instant case and applying the above policy to facts herein, we find that the petition is untimely as it was filed more than 90 days preceding the terminal date of the existing 3-year contract. Accordingly, we find that the contract is a bar to the instant petition and we shall order the petition dismissed.

[The Board dismissed the petition.]

[17] ". . . 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 or 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." *Deluxe Metal Furniture Company*, 121 NLRB 995, 1006–1007 (1958). See also *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990, 994.

East Tennessee Undergarment Company[1] ***and*** **United Textile Workers of America**

East Tennessee Undergarment Company *and* District 50, United Mine Workers of America. *Cases Nos. 10–CA–4865 and 10–CA–4915. November 20, 1962*

DECISION AND ORDER

On July 9, 1962, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report with a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Inter-

[1] The name of the Respondent appears as amended at the hearing. The Recommended Order and the Notice to All Employees are corrected accordingly.