the steward bothered to answer Nichols respecting that particular remark. It is not clear whether Nichols was accusing the Union or the Company; in any event the ambiguous charge out of his mouth is hardly substantial evidence of guilt by the Respondents.[4]

RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions, it is hereby recommended that the complaint be dismissed in its entirety.

[4] A number of painters are pushers, and are called supervisors by the General Counsel; they are regular union members and were present at the various meetings. The General Counsel relies upon their presence at such meetings and on statements of some of them on the job as supporting proof that the Company knew what was going on in the Union and therefore carried out the will of the Union. I find on the entire record that the pushers are not supervisors within the meaning of the Act, but deem it pointless to detail here the *minutiae* of testimony on this disputed issue. Even assuming the pushers were agents of the Company, my conclusion would be the same, for their participation in the events adds little of substance to the case.

Joseph Busalacchi, Thomas Busalacchi, Mario Busalacchi and Anthony T. Procopio, a partnership d/b/a Union Fish Company,[1] Petitioner *and* Amalgamated Meat Cutters and Butcher Workmen of North America, Local 229, AFL–CIO [2]

Joseph Busalacchi, Thomas Busalacchi, Mario Busalacchi and Anthony T. Procopio, a partnership d/b/a Union Fish Company *and* Jeannette K. Liegel, Petitioner *and* Amalgamated Meat Cutters and Butcher Workmen of North America, Local 229, AFL–CIO. *Cases Nos. 21–RM–1147 and 21–RD–744. December 20, 1965*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Max Steinfeld. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Employer and the Intervenor filed briefs.[3]

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Members Fanning, Brown, and Jenkins].

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

[2] The name of the Intervenor appears as amended at the hearing.

[3] On March 15, 1965, the Intervenor filed a motion to stay proceedings and to reopen, and on May 24 filed a motion to reopen record for the receipt of arbitration transcript. On June 7 the Employer filed an opposition to the Intervenor's motion to stay and its motion to reopen. Subsequently, on July 22 the Intervenor filed a motion to reopen record for the receipt of addendum to agreement, and on July 30 the Employer filed an opposition to this last motion of the Intervenor The foregoing motions are hereby denied for the reasons set forth elsewhere in this Decision, Order, and Direction of Election.

Upon the entire record in these cases, the Board finds:

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

2. The labor organization (Intervenor) involved in Case No. 21–RM–1147 claims to represent certain employees of the Employer. On the other hand, in the decertification petition in Case No. 21–RD–744, an employee of the Employer asserts that the Intervenor is no longer the representative of certain employees of the Employer as defined in Section 9(a) of the Act.

3. A 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 some 25 years, several fish companies in the San Diego, California, area, including the Employer or its predecessor, participated in group collective-bargaining negotiations with the Intervenor. The fish companies were not organized formally, but the record establishes that each company, after receiving individual contract termination notices from the Intervenor, sent a representative to participate in the collective-bargaining negotiations. Joseph Busalacchi, a partner, served as the Employer's representative. It appears that after the completion of negotiations, the Intervenor prepared copies of the final agreement arrived at during the negotiations, and each employer signed a separate copy of that agreement.

On November 26, 1963, the Employer, together with six other companies, received from the Intervenor a notice to reopen the existing contract which was to terminate on February 1, 1964. On January 2, 1964, a decertification petition in Case No. 21–RD–704 was filed by an Employer seeking to decertify the Intervenor as the bargaining representative of the Employer's employees. Despite the filing of the decertification petition, the first bargaining session pursuant to the Intervenor's notice was held on January 21, 1964, and the next meeting was scheduled for January 24. However, at the request of Employer Representative Busalacchi, this latter meeting was postponed. Thereafter, on January 28, at a meeting attended by Busalacchi and the representatives of the other fish companies, final agreement on a new contract was arrived at by all the parties. Subsequent to ratification by the Intervenor's membership, the agreement was prepared in final form, and reproduced by the Intervenor and delivered to the participating companies. The Employer refused to sign the agreement.

On April 24, 1964, the Regional Director for Region 21 issued his Decision and Order in Case No. 21–RD–704 wherein he found that the Employer's employees were but a segment of an existing multiemployer unit. Accordingly, he dismissed the petition on the ground that such petition sought an election among employees in an inappropriate unit.

On June 2, 1964, the Intervenor filed 8(a)(1) and (5) charges in Case No. 21–CA–5984, alleging that on or about February 15, 1964, the Employer unlawfully refused to bargain with the Intervenor by refusing to execute the collective-bargaining agreement described above. Thereafter, pursuant to a settlement agreement approved by the Regional Director on August 4, 1964, the Respondent agreed to sign the above-described bargaining agreement. Pursuant to the settlement agreement the Employer signed the contract dated February 1, 1964, copies of which had been furnished by the Union.

The contract which the Employer signed contains the following clauses with respect to reopening and duration:[4]

> Section VII(b) It is agreed that this contract will be automatically open on wages only for the purpose of negotiating a wage increase to be effective February 1, 1965. In the event the parties fail to agree, the Employer is permitted to engage in a lock-out and the Union is permitted to strike.
>
> Section XVII—DURATION OF AGREEMENT
>
> This Agreement shall be effective on the third day of February, 1964, and shall be binding on the parties hereto for the period ending the first day of February, 1965, and continue from year to year thereafter, unless either party gives notice in writing sixty (60) days prior to the first day of February of each year, signifying his intention to modify or terminate this Agreement, or to make such changes as may be appropriate to insure compliance with Federal or State legislation affecting the provisions of this Agreement.

On November 25, 1964, more than 60 days and less than 90 days prior to the above-described anniversary date of the contract, the Employer in a letter to the Intervenor, after noting that the existing agreement "ends February 1, 1965," advised the Union that it was withdrawing from the multiemployer group and that it would henceforth conduct its labor negotiations for itself. It thereafter advised the Intervenor that the letter was also to serve as a notice of its intention to terminate the agreement in accordance with section XVII thereof. On or about the same date the Employer notified each of the employers in the multiemployer group that it was withdrawing from the multiemployer arrangement for future contract negotiations with the Intervenor and that henceforth it would engage in negotiations only on an individual-employer basis. On November 30, 1964, the petitions giving rise to the instant proceeding were filed, and by letter dated December 1, the Intervenor notified the Employer of its desire to negotiate on wages

[4] It appears that those copies signed earlier by the other members of the multiemployer bargaining group contain the identical clauses.

only, as provided under section VII(b) of the agreement, and that it would be pleased to hear as to a suitable time and place for a meeting "between the parties."

The Employer now contends that it withdrew unequivocally and in a timely manner from the multiemployer group and that its petition for an election was filed in a timely manner, and that a question concerning representation of its employees now exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The Employee-Petitioner in Case No. 21–RD–744 joins the Employer in this position. On the other hand, the Intervenor contends, in principal part, that the above-described agreement now in issue contains a "typographical error" as to the contract's termination date unnoticed by the Union or any union representative or union counsel until the consolidated hearing in this matter, and that instead of the date "1965" set forth in section XVII, the termination date should read "1966." Thereafter, the Intervenor takes the position that the petitions were not timely inasmuch as there was a valid 2-year multiemployer collective-bargaining agreement in effect at the time the petitions were filed, and that the agreement constitutes a bar to any election, and the same 2-year agreement also renders the Employer's attempted withdrawal from the multiemployer unit untimely.

In support of its contention that the parties intended a 1966 contract termination date rather than a 1965 termination date as appears in the contract clause, the Intervenor relies on a summary of the agreement arrived at by the parties prepared by Max J. Osslo, Intervenor's secretary-business manager, in letter form dated January 30, 1964, and allegedly mailed to all the fish industry employers involved in the negotiations. In the letter it appears that the recently negotiated contract was to extend for a period of 2 years, but that th econtract was to be reopened for negotiations on wages only in 1 year. In addition, the Intervenor also relies on certain evidence allegedly showing that Joseph Busalacchi attended the January 21, 1964, negotiating meeting wherein the Intervenor proposed a 2-year contract term as part of a contract package and wherein the employer representatives agreed to recommend to their principals the Intervenor's contract package proposal as a basis for settlement. Finally, Intervenor contends, in effect, that there would be no reason for including section VII(b) of the contract, if the termination date appearing in section XVII was intended by the parties to extend the contract period for 1 year only.

The Employer, on the other hand, contends that the Intervenor now seeks to contradict the plain meaning of the contract itself by reliance on inadmissible parol evidence to modify a contract whole and integrated on its face. Moreover, apart from the admissibility of such

evidence, the Respondent further contends that there is no evidence that the above-described letter of January 30, 1964, was ever mailed to, or received by, the Employer. Affirmatively, the Employer points to other evidence in the record showing that: The Intervenor, by its own admission, prepared the contract for signature by the parties and the language of the duration clause is clear and unambiguous on its face; the contract bears the signatures of Intervenor's representatives who attended or conducted Intervenor's negotiations; Intervenor Representative Meyer admitted being present at an earlier decertification hearing in Case No. 21–RD–704 between the same parties wherein the Hearing Officer clearly stated, in marking the contract in issue for identification as an exhibit of the Intervenor, that "the last section of the agreement is effective February 3, 1964, and binding on the parties for a period ending February 1, 1965"; Intervenor Representative Meyer personally delivered the contract to Thomas Busalacchi for signature, Meyer and Busalacchi read the contract over, and only then did both Meyer and Busalacchi sign the contract; Meyer visited the Employer's premises on several occasions thereafter and never discussed the duration period of the contract or claimed that the contract continued until February 1966; and even after the Employer gave notice to the Intervenor under section XVII of its intent to terminate the contract, Intervenor never notified the Employer that there was a typographical error in section XVII or that the contract was for a 2-year period. Finally, the Employer argues that section VII(b) of the contract really reinforces section XVII in that when the parties have failed to give notice of intent to modify or terminate and the contract is thus continued for another year, it would nevertheless be automatically open for wage purposes alone effective February 1, 1965.

Two objects of the Board's contract bar policies are to afford parties to collective-bargaining agreements an opportunity to achieve, for a reasonable period, industrial stability free from petitions seeking to change the bargaining relationship, and to provide employees the opportunity to select bargaining representatives at reasonable and predictable intervals. To properly achieve these objects, in determining whether an existing contract constitutes a bar, the Board looks to the contract's fixed term or duration,[5] because it is this term on the face of the contract to which employees and outside unions look to predict the appropriate time for the filing of a representation petition. The desired predictability would be lost if reliance were to be placed on factors other than the fixed term of the contract. Accordingly, the

[5] See *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990; *Benjamin Franklin Paint & Varnish Co., a Division of United Wallpaper, Inc.*, 124 NLRB 54.

Board requires that the term, as well as the adequacy of a contract, must be sufficient on its face, with no resort to parol evidence necessary, before the contract can serve as a bar.[6]

Applying these principles to the facts of the instant case, it is clear that the contract now in issue cannot serve as a bar as contended by the Intervenor. The contract on its face clearly sets forth the termination date as "the first day of February, 1965." It was only this date to which the employees and other interested parties could predict with certainty the appropriate time for the filing of a petition, and indeed, the Employee-Petitioner did in fact rely on this date in filing the decertification petition herein. For the Board now to rely on parol evidence outside the contract to vary the clear termination date established in the contract itself would be to destroy those objects of stability and predictability which our contract bar policies have long sought to achieve.[7] Accordingly, and in agreement with the Employer's contentions, we find, for the purpose of determining the contract bar issue herein, that the contract termination date was February 1, 1965, that the petitions herein were timely filed, and that the contract in question does not bar an election.[8]

4. The Petitioners in Cases Nos. 21–RM–1147 and 21–RD–744 contend that a single-employer unit is appropriate. The Intervenor asserts that the only appropriate unit is a multiemployer unit and that the Employer's withdrawal from the multiemployer unit is untimely.

As noted above, on November 25, 1964, more than 60 days and less than 90 days prior to the contract's anniversary date, by notice to the Intervenor delivered by certified mail, the Employer advised the Intervenor that it was withdrawing from the multiemployer group and that it would henceforth conduct its labor negotiations for itself. The record further shows that the Employer also notified, by certified mail, each of the other employers who were parties to the multiemployer group that it was withdrawing from the multiemployer arrangement

[6] See *Benjamin Franklin Paint & Varnish Co., a Division of United Wallpaper, Inc., supra,* and cases cited therein.

[7] Similarly, Intervenor's motions to stay proceedings pending decision of an arbitrator on the interpretation of the duration and wage reopening clauses, and other motions relating to the receipt of arbitration documents are hereby denied. To grant these motions and to subsequently rely on an arbitration award in this matter, as it appears the Intervenor would now have us do, in effect would destroy by indirection that stability and predictability in the selection of bargaining representative which our contract bar rules have been designed to achieve.

[8] Moreover, even were we to consider that evidence introduced by the Intervenor, we are not persuaded that such evidence, in the circumstances presented herein, is clearly sufficient to establish that the Employer or the parties intended a 2-year contract term. Thus, the evidence does not clearly reveal that the letter of January 30, 1964, was mailed to or received by the Employer, and the fact that the Intervenor may have proposed a contract settlement, which included a 2-year term, on January 21, 1964, does not alone establish that at the meeting of January 28, 1964, some other agreement was not arrived at. Finally, as to Intervenor's argument advanced with respect to section VII(b), it is just as reasonable to infer, as the Employer contends, that section VII(b) really reinforces section XVII of the contract.

for future contract negotiations with the Intervenor and that henceforth the Employer would engage in negotiations only on an individual basis.

We have heretofore rejected Intervenor's contention concerning the termination date of the contract, and have found that the contract's effective termination date was February 1, 1965. Accordingly, as the Employer's notice to each of the employers in the multiemployer group and its notice to the Intervenor was in writing and was given in a timely fashion with respect to the termination date of the contract and prior to the commencement of any multiemployer bargaining, and as the Employer exhibited an unequivocal intention henceforth to conduct its own labor relations and to abandon permanently the multiemployer unit, we find that the Employer has effectively withdrawn from the multiemployer bargaining group.[9]

We find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within Section 9(b) of the Act:[10] All salesmen, journeymen fish butchers and their apprentices, and office workers at the Employer's San Diego, California, fish market, excluding watchmen, guards, professional employees, and supervisors as defined in the Act.[11]

5. As the Intervenor claims to represent the Employer's employees as part of a multiemployer group, we shall place it on the ballot for the election directed herein, in the single-employer unit. However, this unit is narrower than that which the Intervenor claims to presently represent, and during the hearing the Intervenor reserved judgment on its desire to participate in any election which might be ordered. In these circumstances, the Intervenor may withdraw from the election

[9] See, e.g., *Retail Associates, Inc.*, 120 NLRB 388, 395.

The Intervenor's motion to reopen the record for the receipt of a subsequent addendum to the contract here in issue is denied. We have found that the Employer effectively withdrew from the multiemployer group in November 1964, and any subsequent agreement or contract addendum entered into by the remaining parties in the multiemployer group is irrelevant.

[10] Inasmuch as we have found that the Employer effectively withdrew from the multiemployer unit, and as it does not appear that the Intervenor is the currently recognized bargaining representative for a separate unit of the Employer's employees, we shall dismiss the decertification petition in Case No. 21–RD–744. *Goldeen's Inc.*, 134 NLRB 770, 775, and cases cited therein. However, in regard to the RM petition, we shall consider the Intervenor's contention that the contract is still in effect and that the Employer's employees are covered by the contract as a current request for recognition.

[11] Member Brown would find that February 1, 1965, was mistakenly inserted as the terminal date of the contract executed in 1964, and that it was the parties' intention that the contract run for 2 years to February 1, 1966. He is persuaded of this fact by the total impact of testimony and exhibits which show that prior contracts were for 2-year terms, the Union proposed another 2-year contract during bargaining, a 2-year contract was actually agreed to, a summary of contract terms which the Union sent to members of the Association involved immediately after the conclusion of bargaining recites that the contract is for 2 years but may be reopened for negotiations in a year, and the contract's provision for automatic reopening for the purpose of negotiating a wage increase as of February 1, 1965, is realistically irreconcilable with a contract termination date of February 1, 1965. It accordingly follows, in Member Brown's view, that the RM petition was untimely filed, and for an inappropriate unit, and, like the RD petition for an Employer-wide unit, should be dismissed.

if it so desires, upon such notice of its desire to the Regional Director within 10 days after the issuance of this Decision and Direction of Election.[12]

[The Board dismissed the petition in Case No. 21–RD–744.]

[Text of Direction of Election omitted from publication.]

[12] See *Vita Food Products, Incorporated Max Block Co., Inc. (Division of Vita Food Products, Incorporated)*, 103 NLRB 495, 497.

Metal Assemblies, Inc. *and* Wilburn Cooper. *Case No. 7–CA–4794. December 20, 1965*

DECISION AND ORDER

On September 21, 1965, Trial Examiner John P. von Rohr issued his Decision 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 attached Trial Examiner's Decision. He further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

[The Board adopted the Trial Examiner's Recommended Order with the following modification: Add the following as paragraph 2(b), and reletter the following paragraphs consecutively:

["(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement

[1] The Trial Examiner properly found that the settlement agreement of March 3, 1964, may not itself be used to establish union animus. Although his citation of *Larrance Tank Corporation*, 94 NLRB 352, is inapposite to this precise issue in the present proceeding, we note our modification of that case in *Northern California District Council of Hodcarriers and Common Laborers of America, AFL–CIO, etc. (Joseph Mohamed, Sr., an Individual, d/b/a Joseph's Landscaping Service)*, 154 NLRB 1384.