Union Carbide Corporation *and* International Association of Tool Craftsmen & its Local No. 20, N.F.I.U., Petitioner. Case 10–RC–8363

April 29, 1971

DECISION ON APPEAL AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Alan L. Rolnick. At the commencement of the hearing, the parties adduced evidence on the question of contract bar. The parties stipulated that the record herein is complete on this issue. Thereafter, the Employer and the Intervenors[1] moved to dismiss the petition filed herein, contending that their current collective-bargaining agreement bars an election at this time. The Employer and the Intervenors also moved that further hearings in this case be recessed pending disposition of the motion to dismiss by the Regional Director for Region 10. The Hearing Officer denied the latter motion and the Regional Director affirmed. Thereafter, the Employer and the Intervenors requested that the National Labor Relations Board grant leave to file an interlocutory appeal from the Regional Director's affirmance on the ground that the contract-bar issue should be resolved before requiring the expenditure of the parties' time and resources in further lengthy hearings on other contested matters. The Employer and the Intervenors also renewed their motions to dismiss. The Petitioner opposes the motions to dismiss, averring that the contract here in question is not a bar to this proceeding, but joined in the request for leave to appeal and urged resolution of the contract-bar issue for reasons similar to those advanced by the Employer and the Intervenors.

On December 30, 1970, the Board, by telegraphic Order, granted the requests for leave to appeal. On appeal, the Board decided that it would best effectuate the polices of the Act to rule on the motions to dismiss on the ground of contract bar prior to further hearing on other issues, and ordered that the hearing be stayed pending determination of the contract-bar issue. Thereafter, the Employer filed a brief in support of its motion to dismiss and the Petitioner filed a brief in opposition.

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.

The Board has considered the entire record with respect to the issue involved in the motions to dismiss and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated below:

The Employer is, among other things, engaged in certain defense work under contract with the Atomic Energy Commission, an agency of the United States Government. The Petitioner seeks to sever from an overall production and maintenance unit all machinists first class, machinists second class, machinists trainees, machinists trainee helpers, and instrument makers in the Employer's machine shop in building K–1401 at its K–25 plant, Oak Ridge, Tennessee. As previously stated, the Employer and the Intervenors claim that their current agreement covering the overall unit, including the employees sought by Petitioner, is a bar to the holding of an election at this time. The Petitioner contends otherwise. Specifically, it is the Petitioner's contention that the current agreement between the Employer and the Intervenors is a premature extension of their antecedent agreement and, therefore, that the petition herein, having been filled during the 90–60 day "open period" preceding the termination date of that earlier agreement, was timely and renders the current agreement inoperative as a bar to an election. The Petitioner pleads in the alternative that the current agreement is one of unreasonable duration and, accordingly, does not bar an election at any time after July 1, 1970, the limit of its period of reasonableness.

The instant petition was filed on August 6, 1970. This filing was within the 60–90 day period prior to the expiration date of a contract between the Employer and Intervenors dating from July 1, 1967, to October 15, 1970. However, that agreement was of unreasonable duration, being in excess of 3 years.[2] Under the Board's contract-bar policy, contracts of unreasonable duration are treated as if they were limited to a reasonable period (3 years).[3] Therefore the open period under the July 1, 1967, agreement would commence 90 to 60 days prior to the third anniversary date rather than the expiration date designated in the contract. The petition herein was not filed during this "open" period.

It is true that, as of August 6, 1970, the third anniversary of the 1967 agreement had passed, and had Intervenor and the Employer not renewed their agreement,

[1] Oil, Chemical and Atomic Workers International Union, AFL–CIO, and its Local No 3–288 were permitted to intervene at the hearing on the basis of their current contract with the Employer.

[2] *General Cable Corporation*, 139 NLRB 1123

[3] *Southwestern Portland Cement Co*, 126 NLRB 931.

the petition filed on that date would have been entertained and processed. However, on September 29, 1969, a modification of the existing agreement was executed, with an expiration date of October 15, 1972. There can be no question that this new agreement was a premature extension of the antecedent 1967 contract and hence would have been no bar to a petition filed 90–60 days prior to the third anniversary of the earlier agreement. The question that emerges, however, is whether the fact that no petition was filed during that period now renders the new contract a bar until the third anniversary of its effective date.

This very issue has been considered by the Board in *Republic Aviation Corporation*[4] and *H. L. Klion, Inc.*[5] In both cases, premature extensions were found to bar petitions not timely filed with respect to antecedent agreements. As stated in *Klion:*

> The primary purpose of the premature-extension rule is to protect petitioners in general from being faced with prematurely executed contracts at a time when the Petitioner would normally be permitted to file a petition. However, the Board's rule is not an absolute ban on premature extensions, but only subjects such extensions to the condition that if a petition is filed during the open period calculated from the expiration date . . . the premature extension will not be a bar.[6]

As we are satisfied that the premature nature of the 1969 modification did not render that agreement inoperative as a bar, we turn to Petitioner's alternative contention that said agreement was incorporated into and made part of the antecedent agreement, thereby resulting in a single contract with an effective date of July 1, 1967. From this Petitioner argues that the petition was timely, since filed beyond the reasonable duration of the consolidated agreement.

Petitioner's argument in this regard stems from the fact that the Intervenors and the Employer, following the 1969 negotiations, published the new supplemental agreement in a single booklet which also embodied the viable terms of the 1967 contract. Although article XV thereof provided a term of July 1, 1967, through October 15, 1972, that same provision also recites "each of the parties hereto has caused this contract to be amended and extended by its duly authorized representatives on this the 29th day of September, 1969." In rejecting Petitioner's contention, we note that the Board does not distinguish between new agreements and amendments in applying contract-bar rules.[7] In addition, it is apparent from the terms of article XV that the contract was amended on September 29, 1969, to run for a term expiring October 15, 1972. As the amended agreement or supplement was for a fixed term, the mere fact that the parties, as a matter of convenience, published the amendment in a document carrying over the unaffected terms of the prior contract does not defeat the contract as a bar. We are satisfied that the petition was untimely filed both with respect to the 1967 agreement and the 1969 amendment. We therefore find that no question concerning representation exists and shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

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[4] 122 NLRB 998.
[5] 148 NLRB 656.
[6] *Id.* at 660.
[7] *The Santa Fe Trail Transportation Company,* 139 NLRB 1513, 1514.