Cind-R-Lite Co., a Division of T. E. Connolly, Inc. *and* Kevin Ledbetter, Petitioner and Teamsters Local Union 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31–RD–502

January 9, 1979

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On May 16, 1978, the Regional Director for Region 31 issued a Decision and Order in the above-entitled proceeding, in which he dismissed the petition herein, finding the petition to be barred by an existing contract. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision, contending that the existing contract between the Employer and the Union did not serve as a bar to the instant petition.

On June 30, 1978, the Board issued its ruling on administrative action in which it reinstated the petition and remanded the case to the Regional Director for the purpose of a hearing. Pursuant to the Board's ruling, a hearing was conducted in this matter on August 11, 1978. On August 25, 1978, pursuant to Section 102.67 of the Board's Rules and Regulations, this proceeding was transferred to and continued before the Board by the Regional Director. Thereafter, the Employer filed a posthearing 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 authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's posthearing brief, and concludes, contrary to the Regional Director, that there was no contract bar to the instant petition. Therefore, an election will be directed.

The petition herein was filed on April 6, 1978, by Kevin Ledbetter, an employee, seeking decertification of the bargaining representative, Teamsters Local Union 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, at the Employer's Las Vegas, Nevada, facility. The Regional Director dismissed the petition as untimely, finding that it was filed at a time when a signed contract was in effect and that such contract operated as a bar to an election in this case, citing *Valley Doctors Hospital, Inc., d/b/a Riverside Hospital*[1] and *Mallinckrodt Chemical Works.*[2]

In its posthearing brief, the Employer has contended that its contract proposal of April 5, 1978, cannot bar the instant petition because it lacks on its face a definite term of duration. We find merit in the Employer's argument that there is no contract bar under the principles set out in *Appalachian Shale Products Co.*[3] and *Pacific Coast Association of Pulp and Paper Manufacturers.*[4] Accordingly, we shall direct an election in the petitioned-for unit.[5]

The Employer, a Delaware corporation, is engaged in the manufacture of light-weight concrete block at its factory in Las Vegas, Nevada. The Employer and the Union herein had a collective-bargaining agreement with an expiration date of April 1, 1978. After the expiration of their 3-year contract, they continued their efforts to reach a new agreement. On April 4, 1978, the Employer submitted a final written offer containing proposed amendments to the expired contract. The proposal provided, *inter alia,* for three annual wage increases beginning on April 1, 1978, 1979, and 1980, and that all agreed-to provisions would be retroactive to April 1, 1978. The proposal had no stated termination date. On April 5, 1978, the employees at Cind-R-Lite and WMK Builders Products *en masse* ratified[6] the terms and the union representatives signed the Employer's proposal. Thereafter, on April 19, 1978, the parties executed a formal agreement which specifically provided for a 3-year term from April 1, 1978, until March 31, 1981. In the formal document, certain changes were made in the language of the signed proposal, to wit: the title of the contract, a change in the method of computing pay for vacations, and the substitution of the word "reasonable" for the word "any" as the modifier of the rules which the Employer had the right to establish.

Meanwhile, on April 6, 1978, the instant petition was filed, which the Regional Director dismissed on

[1] 222 NLRB 907 (1976).
[2] 200 NLRB 1 (1972).
[3] 121 NLRB 1160 (1958).
[4] 121 NLRB 990 (1958).
[5] The parties stipulated that the following job classifications would be included: batch plant operators, machine operators, mixermen, material men, truckdrivers, mechanics, forklift operators, and general laborers. They also stipulated to the following exclusions: office clerical employees, guards, and supervisors as defined in the Act.

We reject the Union's contention that the employer is a member of a multiemployer bargaining group along with WMK Builders Products. The fact that the same representative negotiated contracts for both employers does not by itself establish a multiemployer bargaining relationship. Examination of the contracts in evidence indicates that the agreements were separate. Furthermore, the April 5 proposal specifically stated that the Union represented the employees of the two employers individually.

[6] The Employer argues that the ratification was improper because only 8 of the 22 Cind-R-Lite workers participated, and there is no way of telling how those 8 workers voted. It is unnecessary to decide this issue because the contract was incomplete as a bar for the reasons discussed *infra.*

the ground that on April 5, 1978, the Union had signed the written proposal submitted by the Employer which set forth the changes in the expired contract. In making this determination, the Regional Director relied on *Valley Doctors Hospital, supra,* which holds that an exchange of letters showing an offer and acceptance of a proposal constitutes a contract which will bar a subsequent petition.

To serve as a bar to a petition, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship.[7] It is well settled that the expiration date is one of those "substantial terms" and that contracts having no fixed duration shall not be considered a bar for any period.[8] Thus, it is required that the expiration term must be apparent from the face of the contract without resort to parol evidence, before the contract can serve as a bar.[9]

In the instant case, the proposal admittedly had no stated expiration date. The fact that it provided beginning dates for three annual wage increases, without more, fails to give it a fixed terminal date because the last annual wage increase could continue indefinitely.[10]

Therefore, contrary to the finding of the Regional Director, we find that the contract lacked an expiration date at the time the instant petition was filed, and therefore could not serve as a bar.

Accordingly, we find that an election should be directed in the following unit to determine whether the employees of Cind-R-Lite Co., a Division of T. E. Connolly, Inc., wish to continue to be represented by Teamsters Local Union 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or no union:

> All batch plant operators, machine operators, mixermen, material men, truckdrivers, mechanics, forklift operators, and general laborers employed by the Employer at its Las Vegas, Nevada, facility; but excluding all other employees, including office clerical employees, guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[7] *Appalachian Shale Products Co., supra* at 1163.

[8] *Pacific Coast Association of Pulp and Paper Manufacturers, supra* at 993.

[9] *Joseph Busalacchi, et al., d/b/a Union Fish Company,* 156 NLRB 187, 192 (1965), citing *Benjamin Franklin Paint & Varnish Co. Division of United Wallpaper, Incorporated,* 124 NLRB 54 (1959), and cases cited therein.

[10] Cf. *Cooper Tire and Rubber Company.,* 181 NLRB 509 (1970), where the contract stated that it would be "effective from ——— 1968 . . . until —— 1971," and provided for three annual wage increases on September 1, 1968, 1969, and 1970. The Board held that as the contract specifically provided for a duration span of 3 consecutive years (with the day and month omitted) and also set forth the effective day, month, and year of the three annual wage increases, the contract on its face could reasonably be construed as having a 3-year term, effective September 1, 1968.