

**Jet-Pak Corporation and James F. Penna, Petitioner
and Amalgamated Clothing and Textile Workers
Union, AFL-CIO-CLC. Case 3-RD-524**

August 23, 1977

DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, PENELLO, AND
WALTHER

On May 3, 1977, the Regional Director for Region 3 issued a Decision and Direction of Election in the above-entitled proceeding in which he found that the collective-bargaining agreement currently in effect between the Employer and Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, herein called the Union, did not constitute a bar to an election herein, as the union-security provision contained in the contract denied employees a 30-day grace period within which to become members of the Union. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Regional Director's decision, contending that the Regional Director erred in admitting extrinsic evidence to establish that the contract's union-security provision is unlawful.

By telegraphic order dated May 25, 1977, the National Labor Relations Board granted the request for review and stayed the election pending decision on review.

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 and makes the following findings:

The Union is the current representative of the Employer's production employees. Petitioner claims that a substantial number of employees in the appropriate unit no longer wish to be represented by the Union. The Union claims that its contract with the Employer is a bar to the decertification petition. The Employer contends that the contract contains an illegal union-security provision and therefore the contract cannot serve to bar the present petition.

The Union and the Employer are parties to a collective-bargaining contract which, by its terms, is effective from July 1, 1976, to June 30, 1979. The union-security provision in the contract provides as follows:

New employees must become members of the Union on the sixtieth (60th) day following the date of employment or the effective date of this Agreement, whichever is later, and must remain members of the Union in good standing during the term of this agreement as a condition of continued employment.

As noted above, the contract on its face states that it is effective as of July 1, 1976.¹ At the hearing, the parties stipulated that agreement was not reached on all the terms of the contract, including the union-security clause, until August 27, and that the contract was not actually executed until September 16. Petitioner and the Employer took the position that, considering the dates in the stipulation, the union-security clause is actually retroactive and does not give employees their statutory 30-day grace period within which to become union members. The Regional Director, agreeing with those contentions, considered the date of agreement and the date of execution contained in the stipulation and determined that some new employees may have been denied their 30-day grace period. Thus, the Regional Director concluded that the contract could not serve as a bar to an election herein.

In its request for review the Union claims that extrinsic evidence such as that contained in the stipulation may not be considered in determining the legality of the contract's union-security clause. The Union argues that the effective date of the contract is clear and unambiguous from the terms of the contract itself. The Union further contends that, as the union-security clause is lawful on its face, the contract serves to bar the petition herein. We find merit in the Union's contentions.

The Board has consistently held that "the legality of a contract asserted as a bar is to be determined in representation proceedings from the face of the contract itself and that extrinsic evidence will not be admitted in a representation proceeding to establish the unlawful nature of such a contract."² The Board first enunciated the reasons for this rule in *Paragon Products Corporation*.³ There the Board noted that an unfair labor practice proceeding is the proper method of enforcing the statutory proscription against discriminatory practices, such as an unlawful union-security clause, as a representation proceeding which is investigatory in character is not the proper forum for entertaining matters properly left to an adversary proceeding. The Board recognized its duty to be aware of unlawful contract provisions, but

¹ All dates are in 1976 unless otherwise indicated.

² *Loree Footwear Corporation*, 197 NLRB 360 (1972). See also *Pine Transportation, Inc.*, 197 NLRB 256 (1972), and *St. Louis Cordage Mills*,

Division of American Manufacturing Company, Inc., 168 NLRB 981 (1967).

³ 134 NLRB 662 (1961).

concluded that the illegality of such provisions must appear from the terms of the contract itself.⁴

In the present proceeding the Regional Director correctly noted the applicable case precedent and the policy reasons contained therein. He further appropriately noted cases wherein the Board has considered the date of execution of the contract and the date of agreement where those facts have appeared on the face of the contract.⁵

However, the Regional Director was of the opinion that the stipulation agreed to by the parties is a form of "uncontroverted evidence" which does not present the "dangers normally present in a non-adversary representation hearing" as described in *Paragon Products*. The Regional Director was of the opinion, therefore, that it was appropriate to consider the effect of the stipulation on the union-security clause, as such consideration does not violate any of the proscriptions set forth in *Paragon Products*.⁶

We are of the opinion that, under applicable Board precedent, the Regional Director erred in considering the Parties' stipulation and its effect on the legality of the union-security clause. Even considering the

possible safeguards of a stipulation as a form of "uncontroverted evidence," this is precisely the type of extrinsic evidence which the Board has refused to allow in representation proceedings. Thus, in determining whether a contract serves as a bar to an election, we are permitted only to examine the terms of the contract as they appear within the four corners of the instrument itself.

Therefore, the only remaining issue before us is whether the union-security clause in the contract is lawful on its face. We find that it is clearly lawful, as it does in fact give employees the statutory 30-day grace period within which to become union members. Accordingly, and as the contract otherwise meets the requirements of *Appalachian Shale Products Co.*,⁷ we find that the contract serves as a bar to the petition herein. We shall therefore dismiss the petition.

ORDER

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

⁴ The Board also noted that if the clause in question has been found to be unlawful in an unfair labor practice proceeding the contract would not bar a representation petition.

⁵ *Standard Molding Corporation*, 137 NLRB 1515 (1962), and *National Seal Division of Federal-Mogul Corporation*, 176 NLRB 619 (1969).

⁶ Although the parties further stipulated that the Union did not attempt to enforce the union-security clause until November 1, the Regional Director found this irrelevant, citing *Paragon Products*. This appears to us to be a somewhat inconsistent application of the appropriate principles.

⁷ 121 NLRB 1160 (1958).