

In the Matter of BETHLEHEM STEEL COMPANY, SHIPBUILDING DIVISION,
EMPLOYER and CHANDLER C. JACKSON, AN INDIVIDUAL, PETITIONER
and INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS', ARCHITECTS'
AND DRAFTSMEN'S UNION, LOCAL 116, AFL, UNION

Case No. 16-RD-32.—Decided October 8, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition for decertification duly filed, hearing in this case was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in the case, the Board² finds:

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

2. The Petitioner, an employee of the Employer, asserts that the Union is no longer a representative of the Employer's employees as defined in Section 9 (a) of the amended Act.

The Union, a labor organization affiliated with the American Federation of Labor, was certified by the Board on December 29, 1945, as the bargaining representative of employees of the Employer.³

¹ While the Regional Director's failure to serve the Union with Notice of Hearing and the hearing officer's granting of the Union's motion for intervention conditionally upon its achieving full compliance with the filing requirements of the Act, were erroneous, they do not constitute prejudicial error. As the certified bargaining representative sought to be decertified under Section 9 (c) of the Act, the Union is a necessary party to this proceeding and entitled to participate therein regardless of its compliance status. See *Matter of Harris Foundry & Machine Company*, 76 N. L. R. B. 118. Moreover, the Union had a current contractual interest entitling it to unconditional intervention.

Beaumont Metal Trades Council, which represents the Union together with other labor organizations in bargaining with the Employer, is merely an affiliate of the Union whose interest herein, at best, is coextensive with that of the Union. Both are signatories to the alleged current contract. Beaumont Metal Trades Council may, therefore, participate in this proceeding, either in its capacity as representative of the Union without formal intervention, or as a separate entity on the basis of its contractual interest. See footnote 7, however, for the effect of the Union's noncompliance upon the certification of the election results.

² 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-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Reynolds and Murdock].

³ Although Beaumont Metal Trades Council has bargained with the Employer on behalf of the Union, the latter has not thereby lost its status as exclusive bargaining representative of the employees in the appropriate unit, as certified.

3. The question concerning representation:

Beaumont Metal Trades Council, herein called the Council, on behalf of certain of its constituent unions, executed a master contract with the Employer on March 13, 1942, which was subsequently modified on July 9, 1944, and on July 31, 1945. On February 14, 1946, after its certification by the Board, the Union entered into a supplemental agreement with the Employer whereby the Union became a party to and adopted the provisions of the existing contract between the Council and the Employer.

On August 2, 1947, the Council and the Employer supplanted their previous contract with a modified master contract which the Union also executed in its own behalf. With respect to its duration, the latter contract provides:

This modified agreement shall be effective as of the 2nd day of August 1947 and shall continue in full force and effect from year to year unless either party hereto shall notify the other in writing not less than 60 days prior to the anniversary date of this modified agreement of a notification to modify or terminate same.

On June 2, 1948, the Council notified the Employer by letter of its desire to amend the contract pursuant to the above-quoted provision. Thereafter, the contracting parties commenced negotiations encompassing all the provisions of their previous contract, which contract, however, they orally agreed to continue in effect during the negotiations. The decertification petition herein was filed on June 28, 1948. Under these circumstances, the Union contends that the petition is barred.

We find no merit in this contention. The notice of June 2, 1948, to amend the contract, as provided therein, effectively forestalled the automatic renewal of the contract.⁴ The oral agreement of the contracting parties to continue the contract in force during negotiations, among other things, rendered the contract one of indefinite duration, which cannot operate as a bar. Accordingly, we find that no contractual bar exists to a present determination of representatives.

We find that 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.

4. The following employees of the Employer at its Beaumont, Texas, shipyards, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

⁴ *Matter of Dictaphone Corporation*, 78 N. L. R. B. 866; *Matter of Whittin Machine Works*, 76 N. L. R. B. 998.

All senior leading men, leading men, senior draftsmen, draftsmen, junior draftsmen, apprentice draftsmen (learners) checkers, senior clerks, general clerks, junior clerks, material expeditors, blueprint machine operators and blueprint room clerks engaged in the Employer's engineering department, and progressmen A and B employed in the Employer's progress department,⁵ excluding administrative employees, secretaries, stenographers, typists, chief engineers, engineers, superintendents, department heads, the chief clerk, and all other supervisors.⁶

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for the purposes of collective bargaining, by International Federation of Technical Engineers', Architects' and Draftsmen's Union Local 116, AFL.⁷

⁵ The Employer asserted at the hearing the progressmen A and B are no longer employed. However, they are included in the unit, should the Employer at a future date reinstate these classifications.

⁶ This is the same unit for which the Union was certified as bargaining representative on December 29, 1945, when the plant was operated by the Employer's predecessor. *Matter of Pennsylvania Shipyards, Inc*, 64 N. L. R. B. 1135.

⁷ The Union will be certified if it wins the election, provided that, at that time, it is in compliance with the filing requirements of the Act. Otherwise, the Board will certify only the arithmetical results of the election. *Matter of Harris Foundry & Machine Company, supra*.