In the Matter of ARMSTRONG CORK COMPANY, EMPLOYER *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95-95A, AFL, PETITIONER

Case No. 6-RC-75.—Decided November 29, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing 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]

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the record in this case, the Board finds:

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

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

3. The question concerning representation:

The Employer and the Intervenor contend that their contract of May 1, 1946, as amended, bars this proceeding. The amended contract was effective until May 1, 1948, and automatically renewable thereafter from year to year unless either party served notice of termination 30 days before the anniversary date. On February 26, 1948, the Intervenor served the Employer with such notice. On March 1, 1948, the Petitioner requested recognition as bargaining agent of the employees here involved, and on March 22, 1948, it filed

[1] The Employer and Local 255, United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, hereinafter called the Intervenor, moved to dismiss the petition on the grounds that: (a) their contract dated May 1, 1946, is a bar to this proceeding, (b) the filing of the petition was untimely, and (c) the unit is inappropriate. The hearing officer referred these motions to the Board. For the reasons hereinafter stated, the motions are denied.

*Chairman Herzog and Members Reynolds and Gray.

the petition herein. On May 25, 1948, the Employer and the Intervenor signed a new contract. As the operation of the automatic renewal clause of the amended contract was forestalled by the Intervenor's notice of February 26, 1948, and as the new contract of May 25, 1948, was executed after the petition herein was filed, neither contract bars this proceeding.[2]

We find no merit in the contention of the Intervenor that the petition herein was untimely. It argues that Section 8 (d) (1) of the amended Act advanced the automatic renewal date of its contract with the Employer from April 1, 1948, to March 1, 1948, and that therefore the petition was filed too late. We have held, however, that Section 8 (d) (1) of the amended Act merely defines one aspect of the obligation to bargain collectively, and does not affect the automatic renewal provision of an existing collective bargaining agreement.[3]

Nor do we find merit in the contentions of the Employer and the Intervenor that the petition should be dismissed because more than 10 days elapsed between the Petitioner's request for recognition and the filing of its petition. The Board has frequently held that a claim for recognition asserted more than 10 days before the filing of a petition by the claiming union is rendered inoperative by a contract executed in the intervening period; but where no contract is executed until after the petition has been filed, the petition itself prevents the contract from serving as a bar.[4] As the petition herein was filed before the execution of the contract of May 25, 1948, that contract is not a bar to this proceeding.

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 appropriate unit:

The petitioner seeks to represent a unit composed of four shift operators and four assistant shift operators employed in the Employer's powerhouse.[5] The Employer and the Intervenor contend that such a unit is inappropriate, in view of the history of collective bargaining on a plant-wide basis since 1937.

The shift operators and assistant shift operators are engaged in operating and maintaining the equipment in the Employer's powerhouse, which adjoins the main plant building. They are supervised by the powerhouse foreman. They are included both in a plant-wide

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[2] *Matter of George S Mepham Corporation*, 78 N. L R B. 1081

[3] *Matter of Crowley's Milk Co , Inc.*, 79 N. L. R. B. 602; *Matter of International Harvester Co*, 77 N. L. R. B. 242.

[4] *Matter of Heywood Narrow Fabrics Co.*, 75 N. L. R. B. 1262.

[5] The parties agree that if an election is directed in this case, the substitute assistant shift operator, who spends 50 percent of his time working in the powerhouse, should be included in the unit.

seniority system and, for certain purposes, in a powerhouse seniority group. There is little interchange of employees between the powerhouse and other departments. Although these employees have been included in a production and maintenance unit since 1937, the Board has held that a bargaining history on a more comprehensive basis is not in itself sufficient to deny such a group the opportunity of deciding whether they desire to continue to be represented as part of a larger unit or to bargain as a separate unit.[6] As they comprise an identifiable and homogeneous group,[7] the shift operators, the assistant shift operators, and the substitute assistant shift operator may constitute a separate unit if they so desire.

However, we shall make no final unit determination at this time, but shall first ascertain the desires of these employees as expressed in the election hereinafter directed. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit.

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 Sixth Region, 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 voting group described 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 they desire to be represented, for the purposes of collective bargaining, by International Union of Operating Engineers, Local 95–95A, AFL, or by Local 255, United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, or by neither.

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[6] *Matter of United States Gypsum Co.*, 79 N. L. R. B. 1282; *Matter of American Can Co*, 75 N. L R. B. 1127.

[7] *Matter of The Standard Steel Spring Co*, 75 N. L. R. B. 471; *Matter of General Motors Corp.*, 74 N. L R. B. 18.