

In the Matter of ALUMINUM COMPANY OF AMERICA (HARVARD PLANT, CLEVELAND), EMPLOYER and NATIONAL ASSOCIATION OF DIE CASTING¹ WORKERS UNION, UAW-CIO, LOCAL No. 55, PETITIONER

Case No. 8-RC-206.—Decided December 17, 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.² At the hearing the Intervenor moved to dismiss the petition on various grounds. For the reasons hereinafter stated, the motions are hereby denied.

Upon the entire record in the case, the National Labor Relations Board³ finds:

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

2. The Petitioner is a labor organization, affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

International Union, Mine, Mill and Smelter Workers, CIO, herein called the International, and International Union, Mine, Mill and Smelter Workers, Local No. 755, herein called Local No. 755, are labor organizations claiming to represent employees of the Employer. The International and Local are jointly referred to herein as Intervenors.

¹ The petition was filed by Local No. 55, prior to its affiliation with the UAW. The Petitioner's motion to amend petition, so as to reflect the true fact of its affiliation, is hereby granted.

² The ruling of the hearing officer, limiting the intervention of NADCW Local No. 755 to prove that their contract barred this proceeding, subject to the Board's determination is reversed. Intervention when granted is for all purposes. *Matter of Bush Woolen Mills, Inc.*, 76 N. L. R. B. 618. However, no party herein appears to have been prejudiced, as the record indicates that, in fact, the Intervenor was permitted to participate in all phases of the hearing.

³ 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 Houston and Murdock].

3. The question concerning representation :

At the hearing, the Intervenors moved to dismiss the petition primarily on the ground ⁴ that an existing contract between the Intervenors and the Employer was a bar to this proceeding.

In April 1941, Local No. 55 of the National Association of Die Casting Workers was designated bargaining representative for the Company's employees on a plant-wide basis after a consent election. In January 1942, the NADCW merged with the International, and Local No. 55 became Local No. 755 of the Die Casting Division of the International. Since that date the Company and the Intervenors have had continuous contractual relations.⁵

On May 19, 1947, a 2-year contract was executed between the Company and the Intervenors, with a wage reopening clause. On February 18, 1948, the Intervenors advised the Company of their desire to renegotiate wages and "fringe" items.⁶ From March 16 to June 28, 1948, negotiation meetings were held. On June 23, 1948, the parties orally agreed to the terms of a supplemental agreement, subject to the approval of Local No. 755. Its provisions included a wage increase, and, at the request of the Company, provided that the contract of May 19, 1947, be extended for 1 year to May 19, 1950. No "fringe" items were granted. On June 29, 1948, Local No. 755 approved the proposals in the circumstances mentioned below.

In the meantime, a schism within the ranks of Local 755 had developed. Prior to June 20, 1948, the membership of Local No. 755 had engaged in considerable discussion concerning compliance by the International with Section 9 (f), (g), and (h) of the Act. At a meeting held on June 20, Local No. 755 voted to send delegates to a Toledo meeting, at which delegates from 24 of the 37 locals of the International voted to recommend the reestablishment of the NADCW as a separate organization as it had been prior to its affiliation with the International in 1942. Local No. 755 of the International was again to become Local No. 55 of the NADCW. The same local officers

⁴ The Intervenors also moved to dismiss on the following grounds: (1) the Petitioner was "not in existence" at the time the representation claim was presented. The organizing committee involved herein is a "labor organization" within the meaning of Section 2 (5) of the Act and may claim recognition and file a petition on behalf of the after-formed organization. See *Matter of Texas Hardwood Manufacturing Co.*, 73 N. L. R. B. 356; (2) Local No. 55, as recreated, involved a secession in violation of the Constitution of the Intervenors. The question of whether or not the Petitioner has violated the constitution of the Intervenors is immaterial to the issue of representation. The resolution of such a question is not the function of the Board. *Matter of Harbison-Walker Company*, 44 N. L. R. B. 1280, 1283; *Matter of Cincinnati Daily Newspaper Publishing Assn.*, 56 N. L. R. B. 171.

⁵ After the merger, the Intervenors won a consent election held November 8, 1943, Case No. 8-R-1302.

⁶ The so-called "fringe" items included vacations, additional holidays, holiday pay, and a health and welfare program, all of which were covered by the contract then in existence.

were to be retained. Following this Toledo plan, membership cards for Local No. 55 were signed from June 26 to June 29.

On June 29, James Miller, as president of Local No. 755, called meetings of the various shift employees. At the meetings the employees approved the offer of the Company which had been the subject of negotiations, and then voted to reestablish Local No. 55. After the first of these meetings, James Miller, as provisional president of Local No. 55, presented the Company with a letter demanding recognition of Local No. 55 and advising the Company not to enter into any contract with any other labor organization.

On June 30, 1948, the Company and a representative of the Intervenors signed the supplemental agreement. Wage increases were made retroactive to June 28. On July 8, 1948, within 10 days of its demand, Local No. 55 filed the petition herein, together with membership cards showing substantial interest. Local No. 55 became affiliated with the UAW-CIO on August 3, 1948.

The Intervenor's contention that a contract bars the proceedings is without merit.⁷ Ordinarily, where a contract provides for modification during its term, the negotiation of such modification by the parties does not operate to remove the contract as a bar to a rival claim.⁸ However, where, as in this case, the parties extend the expiration date of the contract, they "open" the contract so as to permit a rival union to raise a question of representation.⁹ The first contract, therefore, cannot constitute a bar to this proceeding. For the reasons set forth in *Matter of General Electric X-Ray Corporation*,¹⁰ the supplemental contract executed on June 30, 1948, does not preclude a present determination of representatives. Under the circumstances,¹¹ the notice was timely and the petition was filed within 10 days of the notice; therefore the contract intervening between the notice and the petition is not a bar.

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.

⁷ The contract of March 19, 1947, is no longer protected by Section 103 of the Act. Sec. 103 is without effect upon the applicability of contract-bar principles. *Matter of General Electric Company*, 77 N. L. R. B. 1198.

⁸ *Matter of S. & W. Fine Foods, Inc.*, 74 N. L. R. B. 1316 and cases cited therein.

⁹ See *Matter of Beattie Mfg. Co.*, 77 N. L. R. B. 361, and cases cited therein. The fact that the extension was at the Employer's request is immaterial. *Matter of Worth Hardware Co., Inc.*, 71 N. L. R. B. 684, 685.

¹⁰ 67 N. L. R. B. 997.

¹¹ *Matter of Mississippi Lime Co.*, 71 N. L. R. B. 472, is distinguishable on the ground that the petitioner in that case had neglected to pursue a right to petition for representation proceedings (before the Mill B date of the old agreement), whereas the right to petition here arises because the contract was renegotiated during its term. The Petitioner here has not neglected an opportunity, because it made a demand prior to the execution of the supplemental contract and filed its petition within 10 days after the demand.

4. The appropriate unit:

Both the Petitioner and the Intervenors contend that the present over-all unit of production and maintenance employees, including factory timekeepers and tally clerks, is appropriate. The Employer, while agreeing with the general composition of the unit, contends that timekeepers and tally clerks¹² should be excluded because they are clerical employees acting in a confidential capacity in furnishing data from which wages, seniority, and bonuses are determined. The record shows that the timekeepers and tally clerks, who are currently included in the production and maintenance unit, are engaged in the ordinary type of compilation of time records for production workers in the plant, are hourly paid like the production workers, and have working conditions generally similar to those of the other employees in the production and maintenance unit. We can perceive no basis for distinguishing these employees from the type of timekeepers and tally clerks whom we have held to be no different from factory clericals, and therefore, belong in the same unit with production and maintenance employees.¹³

Accordingly, we find that all production and maintenance employees of the Employer, including factory timekeepers and tally clerks, but excluding office clerical and all other office employees, guards, professional employees, and all supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION¹⁴

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Aluminum Company of America, Harvard Plant, Cleveland, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth 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 unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date

¹² The indeterminate plan of the Employer to discontinue the classification of "tally clerk" does not justify their exclusion. See *Matter of Blue Star Airlines, Inc.*, 73 N. L. R. B. 663, 665.

¹³ *Matter of Boeing Airplane Co., Wichita Div.*, 78 N. L. R. B. 795, and cases cited therein.

¹⁴ As the International and Local No. 755 have not complied with the registration and filing requirements of Section 9 (f), (g), and (h) of the amended Act, we shall not place their names on the ballot herein.

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 by National Association of Die Casting Workers Union, UAW-CIO, Local No. 55, for the purposes of collective bargaining.