

In the Matter of WYCKOFF STEEL COMPANY, EMPLOYER *and* DISTRICT  
No. 8, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

In the Matter of WYCKOFF STEEL COMPANY, EMPLOYER *and* LOCAL  
No. 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
A. F. OF L., PETITIONER

*Cases Nos. 13-RC-754 and 13-RC-759, respectively.—Decided No-  
vember 9, 1949*

DECISION  
AND  
ORDER

Upon separate petitions duly filed, a consolidated hearing was held before Morris Slavney, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Upon the entire 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 Petitioner in Case No. 13-RC-754, herein called the IAM; the Petitioner in Case No. 13-RC-759, herein called the IBEW; and Amalgamated Local 453, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, herein called the UAW, are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation:

The Employer and the UAW have had continuous contractual relations since 1943. The latest contract between them was executed on April 16, 1947, and was to expire on May 31, 1949. On July 29, 1948, almost 10 months before the expiration of this contract,<sup>2</sup> the Employer and the UAW executed a supplemental agreement extending this contract to May 31, 1950, with certain modifications of the standard hourly wage rates, and some revisions of the check-off<sup>3</sup> and mainte-

<sup>1</sup> The hearing officer referred to the Board the Petitioners' motions to amend the description of the units severally requested by them. These motions are hereby granted. See *Matter of Ekco Products Company*, 72 N. L. R. B. 1058.

<sup>2</sup> The petitions in this case, however, were not filed until after the expiration date of this contract.

<sup>3</sup> The new agreement provided for a voluntary check-off.

nance of membership provisions. These latter provisions were preceded by the following clause:

These provisions shall take effect as of midnight May 31, 1949, or at any time thereafter during the life of this agreement, *but only if and when they may take effect in accordance and consistent with provisions of Federal Laws.* (Emphasis supplied.)

No election under 9 (e) (1) of the Act was held for the purpose of authorizing the Employer and the UAW to enter into a maintenance of membership agreement.

IAM and the IBEW contend that under the *Hager Hinge* doctrine,<sup>4</sup> the presence of an unauthorized maintenance of membership provision in the agreement as extended vitiates, the contract's effectiveness as a bar to the instant petitions. The Employer and the UAW contend that their contract is a bar, asserting that, by virtue of the above quoted clause in their supplemental agreement, the contractual provisions for maintenance of membership have not become effective.<sup>5</sup>

We have recently said that a union-security provision which contains a provision that it should not become effective until after it is authorized by an election is clearly lawful, and thus that a contract containing such a provision may serve as a bar to a present determination of representatives.<sup>6</sup> On the other hand, we have held that where the effect of a saving clause, attached to an unauthorized union-security provision, is not to defer the application of that provision, but merely to postpone the issue of its legality for future determination by some proper tribunal, the contract in which the clause appears is not a bar.<sup>7</sup> In so holding, the Board has noted that the mere presence of an existing union-security provision acts as a restraint

<sup>4</sup> *Matter of C. Hager & Sons Hinge Manufacturing Company*, 80 N. L. R. B. 163, wherein the Board held that a union-security provision, not authorized by an election under Section 9 (e) (1) of the Act, is unlawful and precludes the collective bargaining contract in which such provision is contained from serving as a bar to proceedings for representation.

<sup>5</sup> On May 31, 1949, the day preceding the effective date of the supplemental agreement, the Employer posted notices purporting to inform its employees that under the existing maintenance-of-membership provisions they had the right to withdraw from the UAW during a period from June 1 to June 15, 1949. It was conceded, however, that this action of the Employer was entirely unilateral and was taken without any prior consultation with the UAW.

<sup>6</sup> *Matter of Schaefer Body, Inc.*, 85 N. L. R. B. 1247; *Matter of Hazel-Atlas Glass Company and Clarksburg Paper Company*, 85 N. L. R. B. 1305.

<sup>7</sup> In *Matter of Lykens Hosiery Mills, Inc.*, 82 N. L. R. B. 981, the Board held that a contract containing an unlawful union-security provision was not saved as a bar by a provision that, "loss of membership shall be cause for discharge only under the law as it exists at the time the request is made by the union, which expulsion can be reviewed in line with the grievance procedure." In *Matter of Unique Art Manufacturing Co.*, 83 N. L. R. B. 1250, the Board likewise held to be no bar a contract whose union-security provision had not been authorized in an election, and which contained a clause stating that any provisions of the contract which were contrary to any Federal or State Law should be null and void. See also *Matter of Evans Milling Company*, 85 N. L. R. B. 391 (Chairman Herzog dissenting).

upon those desiring to refrain from union activities, within the meaning of Section 7 of the amended Act.<sup>8</sup> In the present case, however, the quoted language of the contract clearly discloses the parties' intent to defer the *application* of their union-security agreement until such time as it might lawfully become effective. In these circumstances, we find that the contract is a bar to a present determination of representatives. We shall accordingly dismiss the petitions.<sup>9</sup>

### ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in this case, the National Labor Relations Board hereby orders that the petitions filed herein be, and they hereby are, dismissed.

---

<sup>8</sup> See *Matter of C. Hager & Sons Hinge Manufacturing Company*, *supra*, and cases cited in footnote 7.

<sup>9</sup> In view of our decision above set forth, we need not determine the other issues presented by the petitions herein.