

In the Matter of AMERICAN HOIST & DERRICK COMPANY, EMPLOYER  
and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 36,  
A. F. OF L., PETITIONER

*Case No. 18-RC-426.—Decided December 15, 1949*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Clarence A. Meter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Chairman Herzog and Members Reynolds and Gray].

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 labor organizations involved claim to represent certain employees of the Employer.

3. The question concerning representation:

The Petitioner seeks to represent a unit of powerhouse employees. The Employer and International Association of Machinists, Local No. 459, AFL, herein called the Intervenor, contend that there is a contract bar and therefore the petition should be dismissed.

In July 1948 the Employer signed a contract with the Petitioner, the Intervenor, and International Molders and Foundry Workers Union, Local No. 232, A. F. of L., herein called the Molders, providing in part for recognition of the Petitioner as the exclusive representative of the powerhouse employees, with certain exceptions.<sup>1</sup> The contract described the Petitioner, the Intervenor, and the Molders as "comprising the St. Paul Machinists, Molders and Operating Engineers' Joint Council, hereinafter referred to as the Union." However, the contract was signed by representatives of the Petitioner, the Intervenor, and

<sup>1</sup> The Intervenor represented powerhouse helpers and laborers.

the Molders, respectively, and not by any representative of the Joint Council as such.

Pursuant to the terms of the 1948 contract, notice of termination was given the Employer by a representative of the Joint Council in March 1949. Thereafter, several negotiating conferences were held, at which all the contracting parties were represented, including the Employer and the Petitioner. These conferences culminated on May 11, 1949, in an oral agreement on the terms of a new contract. On June 1, 1949, a contract, approved by the Employer and apparently embodying the prior oral agreement, was ratified by the Joint Council, the Petitioner opposing but being outvoted by the Intervenor and the Molders. On the following day the Petitioner advised the Employer that it would not sign this contract and that it was withdrawing from the Joint Council. On June 7, the petition herein was filed. Two days later, on June 9, the new contract was signed by the Employer, the Intervenor, and the Molders. However, the contract has never been signed by the Petitioner.

We find that there was no fully executed signed contract in existence when the petition was filed. Accordingly, there is no merit to the contract-bar contention.<sup>2</sup> However, our finding is not to be taken as a determination that the Petitioner is or is not bound by the terms of the oral agreement, as a matter of contract law or of good-faith bargaining—issues on which the Employer and the Intervenor strenuously maintain the affirmative, but which are not properly before us in the present proceeding.

Accordingly, we find that a question affecting commerce exists concerning the representation of employees, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

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

All engineers, including junior and maintenance and operating engineers, and all helpers and laborers<sup>3</sup> in the Employer's powerhouse, but excluding all machinists, molders, patternmakers, truck drivers, office and clerical employees, and supervisors as defined in the Act.

<sup>2</sup> See *National Chair Company, Inc.*, 74 NLRB 1014, and cases cited therein. Nor do we find merit in the Employer's contention that the 1948 contract bars this proceeding. Not only was that contract properly terminated, but in addition the parties so considered it, as is clearly established by the fact that they spent almost 2 months negotiating a new contract.

<sup>3</sup> The Intervenor contends that the powerhouse helpers and laborers should not be included in the unit because they have been represented by the Intervenor since 1937. However, as those employees work in the powerhouse a majority of their time and are under the supervision of the chief engineer, we will, in accordance with Board practice, include them in the unit despite a history of collective bargaining on a different basis. See *American Smelting & Refining Co.*, 86 NLRB 1172.

## 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, 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 purposes of collective bargaining, by International Union of Operating Engineers, Local No. 36, A. F. of L.