

In the Matter of X-RAY MANUFACTURING CORPORATION OF AMERICA,
EMPLOYER and LOCAL 475, INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, CIO, PETITIONER

Case No. 2-RC-2679.—Decided February 2, 1951

DECISION AND ORDER

Under a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before D. J. Sullivan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

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

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

3. No 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, for the following reasons:

Local 1227, United Electrical, Radio and Machine Workers of America, herein called the Intervenor, contends that a collective bargaining agreement executed on September 16, 1949, for 1 year, and automatically renewed for another year to September 15, 1951, is a bar to this proceeding. The Petitioner opposes this contention; the Employer taking no position to this respect.

On September 16, 1948, the Employer and Local 1227, UE-CIO, had signed an agreement containing the following provision:

TERM OF AGREEMENT. This agreement shall be effective as of September 16, 1948, and shall continue in full force and effect until September 15, 1949, and shall be renewed automatically thereafter from year to year, unless within sixty (60) days prior to the expiration date of said agreement either party shall give written notice to the other. . . .

The same parties, on September 16, 1949, entered into a further agreement that provided, *inter alia*:

1) That the collective bargaining agreement between them effective on September 16, 1948 and expiring September 15, 1949, shall be continued in full force and effect, *in all its provisions*, and as modified below, until and including September 15, 1950. [Emphasis supplied.]

The petition herein was filed on August 31, 1950.

It is clear that the 1949 agreement, by its terms, incorporated the automatic renewal clause of the 1948 agreement. The 1949 agreement provides unequivocally that the 1948 agreement shall be continued in full force and effect in *all* its provisions, except as expressly modified. One of the terms *not* expressly modified is the automatic renewal clause. True, contracts with "Mill B" provisions customarily contain specific expiration dates as well; indeed, the 1948 agreement did so, and the 1949 agreement referred to it as one with an expiration date. But that does not indicate an intent by the parties to exclude from the agreement the "Mill B" provision of the earlier contract. Our dissenting colleague, by construing the 1949 agreement as not incorporating the automatic renewal provision of the earlier contract, is saying, in effect, that an automatic renewal provision cannot be incorporated by reference, and that he would construe a contract as containing such a provision only if it expressly contains it.

As the petition herein was filed August 31, 1950, after the "Mill B" date of the 1949 agreement, that agreement, as automatically renewed, is a bar to this proceeding. We shall therefore dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

CHAIRMAN HERZOG, dissenting:

I do not agree with my colleagues' finding that the automatic renewal provision of the 1948 agreement was incorporated into the 1949 agreement. I believe that the parties to the 1949 agreement intended to fix a new and definite terminal date, September 15, 1950, and to eliminate the automatic renewal clause of the earlier contract. It appears to me that, in the absence of clearly expressed intent to incorporate in the new or renewed contract the "Mill B" provisions of the old contract, the Petitioner should be entitled to rely on those plain words in the termination clause of the new contract which fixed a definite terminal date (September 15, 1950). I would therefore find the petition of August 31 to have been timely filed, and the contract to be no bar to an election.