In the Matter of ALBION MALLEABLE IRON COMPANY, EMPLOYER *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW–CIO), PETITIONER

Case No. 7–RC–868.—Decided August 1, 1950

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Harold L. Hudson, 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 National Labor Relations Act.

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

3. The question concerning representation:

The Intervenor, Local 413, International Molders and Foundry Workers' Union of North America, AFL, contends that its contract with the Employer constitutes a bar to this proceeding. The Petitioner claims that this contract was prematurely extended and therefore cannot constitute a bar. The Employer agrees with the Intervenor.

On January 17, 1948, the Employer and the Intervenor signed a contract which was to terminate May 15, 1949. This agreement provided that it could be reopened, for wage negotiations only, in or after May 1948. The contract was reopened, and on March 31, 1949, a supplement was executed which provided for an extension of the termination date of the 1948 contract to May 15, 1950, and further provided for an extension to May 15, 1951, if neither party gave the required notice to reopen.

On September 14, 1949, the Intervenor gave due notice of a desire to reopen, and negotiations began on October 1, 1949. These negotiations ended in a complete deadlock and on December 19, 1949, a strike vote was taken. After Federal and State conciliators failed to produce an agreement, the Mayor of Albion, Michigan, where the Employer's plant is located, intervened on January 9, 1950, pleading for a settlement on the ground that a strike of the principal plant in the city

would seriously disrupt the community and for the additional reason that he was then trying to induce the Corning Glass Company to construct a new plant, which negotiations might fail if a strike occurred at this time. The parties, thereafter, reached an agreement on wages and several other terms and conditions. On January 10, 1950, at 8:45 a. m. the Employer received a letter from the petitioner, dated January 9, claiming that it represented a majority of the employees and requesting bargaining. On that day at 2 p. m., the Employer and the Intervenor executed a second supplement to the 1948 contract. This agreement was to expire January 16, 1951. It provided that either party has the right to reopen any and all parts of the agreement on 60 days' notice prior to January 16, 1951, and if neither party gives the required notice, the agreement is to be renewed for an additional year.

On February 22, the Petitioner sent a second demand for recognition to the Employer, and on February 28, 1950, the present petition was filed with the Board.

The Petitioner contends that the *second* extension of the 1948 contract which was executed in January 1950, was premature, and that its petition, filed February 28, before the first supplement's expiration date of May 15, 1950, was timely.

We find merit in the Petitioner's position. We have held in *Republic Steel Corporation*, recently decided,[1] that where an agreement is prematurely extended, the extended agreement constitutes a bar only until the expiration date of the original contract. In the present case, the 1948 contract was extended by its first supplement to May 1950. Its further extension, to January 1951, in January 1950 was premature, and it cannot operate to bar the instant petition filed before May 1950.

The Intervenor concedes the validity of the Board's premature extension rule, but urges that it should not be applied here because of the special circumstances, detailed above, under which the January 1950 supplement was executed. These circumstances are first, that a strike at that time would have had serious economic repercussions on the community. Second, the January 1950 supplement was entered into at the insistence of the Employer, who was not willing to negotiate another contract for the ensuing year. Finally, the great majority of the employees voted to ratify the 1950 extension. The Intervenor contends in effect that this vote is tantamount to a designation of the Intervenor's representative status, thus obviating the existence of any question concerning representation.

[1] 89 NLRB 500.

We do not agree that the premature extension rule is not applicable to the facts of this case. The premature extension rule was necessitated by the mandate of the statute guaranteeing freedom of choice of a bargaining representative to employees. We do not find that the circumstances herein urged as "special" are of such nature as to require us to override this primary purpose of the statute.

The Intervenor also urges that because the local membership voted overwhelmingly to ratify the January 1950 extension, no question concerning representation exists. We have, however, held that even a union-security election is not tantamount to an election of representatives for the purpose of collective bargaining.[2] The fact that the membership here voted to approve the extension of the existing contract is therefore not dispositive of the issue of their choice of bargaining representatives for the future.

We therefore find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The parties stipulated that the appropriate unit is the same group currently represented by the Intervenor.

We find, in accord with the stipulation of the parties, that all production and maintenance employees including pattern and die maintenance workers in the manufacturing control division, but excluding all other employees of the manufacturing control division, office and clerical employees, guards, and 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.

5. The parties disagree as to the voting eligibility of certain laid-off employees. The Employer and the Intervenor contend that these employees should not be found eligible to vote. The Petitioner, on the other hand, urges that they be found eligible.

The Company operates a malleable iron foundry in Albion, Michigan. Following the war and beginning with June 1946, there has been a continued lessening of demand for the Company's product resulting in reduced employment. In November 1949, the Company determined on a policy to decrease costs and arrive at a stabilized level of production, as a consequence of which it laid off some 180 employees throughout all the departments of the plant. Under the terms of the last contract, laid-off employees would be recalled in the order of seniority. However, the Company testified that it had no present intention of increasing employment above present levels and that it had no expectation that these employees would ever be recalled.

[2] *Baker Ice Machine Company, et al.*, 86 NLRB 385.

We have held that the pertinent issue in determining eligibility is whether laid-off employees now have a reasonable expectancy of reemployment with the Employer in the near future. Under all the circumstances, it appears that the prospect of any recall of these employees in the immediate future is highly speculative. We are, therefore, of the opinion that the employees in question, having no reasonable expectancy of reemployment, must be deemed permanently laid off. Accordingly, we find them ineligible to participate in the election hereinafter directed.[3]

DIRECTION OF ELECTION[4]

As part of the investigation to ascertain representatives for the purpose 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 payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll 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 purposes of collective bargaining, by International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW–CIO) or Local 413, International Molders' and Foundry Workers' Union of North America, AFL, or by neither.

MEMBER MURDOCK, dissenting:

It is my considered opinion that a direction of election should not issue in the present case. In an atmosphere of impending strike and under the impetus of appeals from responsible municipal authority and the pressure of State law, the Employer and the responsible representative of the employees concerned negotiated a mutually acceptable contract. From the standpoint of the Employer, an essential prerequisite to that agreement was the assurance that at least tem-

[3] *Lima Hamilton Corporation*, 87 NLRB 455.

[4] Any participant in the election directed herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

porary stability of labor management relationship at its plant be maintained. In the fair give and take of industrial bargaining, that assurance was tendered him in the form of an extension of the rapidly expiring current agreement. The employees, when polled, overwhelmingly ratified the decision of their representative. My colleagues are now rendering nugatory the industrial stability so attained, merely on the theory that a technical question concerning representation existed. I cannot agree.

The Board, early in the administration of the original Act, recognized that the tripartite interests of labor, management, and the public required some limitation on the freedom of employees to change bargaining representatives at will. In response to that need, contracts, under certain conditions, were made inviolable to challenge by petitions under Section 9 (c). It was in qualification of the rule of "contract bar" that the doctrine of "premature extension" was enunciated. The cases establishing the latter rule clearly point up its purpose. That purpose has always been to prevent representatives no longer commanding the support of employees from perpetuating their tenure by foreclosure of other petitions through misuse of the Board's protection of contracts.[5] It seems patent that the instant factual situation does not involve an attempt to forestall a forthcoming petition, but rather equitable action motivated by the pressures noted above. In the face of the Petitioner's claim to represent the plant personnel, the employees voted 315 to 20 to approve the Intervenor's efforts, and to register assent to extension of a contract which provided that the latter organization be recognized as their sole bargaining representative. There is no contention or basis for assertion that this ratification by the vast majority of the employees in the appropriate unit was in any way fraudulent or disguised.[6] To hold here that a question concerning representation exists concerning these employees brushes aside not only realities but the rationale of the Board's contract bar and premature extension doctrines. To direct an election flouts the Board's long standing policy of furthering industrial stability and ignores peculiar circumstances which, in my opinion, create a valid exception to the premature extension rule as strictly construed by the majority.

[5] See *Wichita Union Stockyards Company*, 40 NLRB 369.

[6] In this connection see my dissent in *Baker Ice Machine Company, et al.*, footnote 2, *supra*.