

In the Matter of AMERICAN CONTAINER CORPORATION, EMPLOYER *and*
UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, C. I. O.,
PETITIONER

Case No. 9-RC-7.—Decided May 18, 1948

Mr. Dan M. Gephart, of St. Paul, Minn., for the Employer.

Messrs. Robert C. Edwards and *Joe Joy*, of Charleston, W. Va., for the Petitioner.

Messrs. C. McMillian and *T. E. Bobbitt*, of Huntington, W. Va., for the Intervenor.

DECISION

AND

ORDER

Upon a petition duly filed, hearing in this case was held at Huntington, West Virginia, on December 10, 1947, before Martin Sacks, hearing officer. At the hearing the Employer and the Intervenor each moved for the dismissal of the petition. The hearing officer referred these motions to the Board. For reasons hereinafter stated, these motions are hereby granted. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board¹ makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

American Container Corporation, a Delaware corporation, is engaged in the manufacture of battery boxes at its plant at Huntington, West Virginia. More than 20 percent of the raw materials used by the Employer is received from points outside the State of West Virginia. The Employer's entire output of finished products, valued in excess of \$750,000 annually, is shipped to points outside the State.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its Board Members [Chairman Herzog and Members Murdock and Gray].
Board Members. [Chairman Herzog and Members Murdock and Gray].

The Employer admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

International Brotherhood of Electrical Workers, Local 317, herein called the Intervenor, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the representative of certain of its employees because of its contractual obligations to the Intervenor.

On August 21, 1947, the Employer and the Intervenor entered into a written agreement providing for exclusive recognition of the Intervenor as representative of the Employer's employees, setting up a grievance procedure, and providing for certain other aspects of joint company-union relations. It was further provided that the parties should meet again within 40 days to negotiate a supplemental agreement concerning wages, hours, and other conditions of employment. On October 2, 1947, pursuant to this latter provision, a contract covering wages, hours, and working conditions was consummated. This contract is to continue until August 20, 1948, and is automatically renewable for yearly periods thereafter, in the absence of notice of a desire to modify or terminate given by either party to the other at least 60 days before any anniversary date.

On September 18, 1947, the Petitioner addressed a letter to the Employer, advising it of the Petitioner's interest in representing certain employees of the Employer. The Petitioner did not file its petition herein, however, until October 17, 1947. The Petitioner contends that the contract entered into by the Employer and the Intervenor is not a bar to an immediate determination of representatives because the agreement originally entered into did not provide for substantive conditions of employment, and covered an expanding unit of employees. The Employer and Intervenor contend that the contract as fully executed on October 2, 1947, bars a present election, and move to dismiss the petition on the ground that the Petitioner did not follow up its formal claim to representation by timely filing a petition with the Board.

The Petitioner's contention that the contract is a bar because it was executed in an expanding unit is without merit, for the record discloses that on October 2, 1947, at the time of the completed contract's execution more than 50 percent of the probable anticipated employee complement was employed.² As set forth above, the petition herein was not filed until more than 10 days after the Petitioner had notified the Employer of its claim. For the reasons set forth in *Matter of General Electric X-Ray Corporation*,³ we find that the contract executed during the interval between the Petitioner's bare claim to representation and the filing of its petition, constitutes a bar to a determination of representatives at this time. Accordingly, we shall dismiss the petition.

ORDER

For the reasons set forth above, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of American Container Corporation, Huntington, West Virginia, filed by United Gas, Coke and Chemical Workers of America, C. I. O., be, and it hereby is, dismissed.

² On October 2, 1947, 95 employees were employed. The Employer anticipates a probable total of 178 to be reached by the autumn of 1948, with a possibility of further expansion to 200 at some time in 1949.

³ 67 N. L. R. B. 997. See, also, *Matter of Reade Scientific Corporation*, 73 N. L. R. B. 310.