

IN the Matter of WILLBORN BROS. COMPANY, INC., EMPLOYER *and* LEO M. PAVEY, PETITIONER *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, AFL, LOCAL 531, INTERVENOR

Case No. 16-RD-3.—Decided June 2, 1948

DECISION

AND

ORDER

Upon a petition duly filed a hearing was held before a hearing officer of the National Labor Relations Board. 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-man panel consisting of the undersigned Board Members.*

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, an employee of the Employer, asserts that the Intervenor is no longer representative of the Employer's employees as defined in Section 9 (a) of the Act.

The Intervenor, International Brotherhood of Boilermakers; Iron Ship Builders and Helpers of America, AFL, Local 531, was established as the exclusive bargaining representative of Employer's employees by a consent election on October 16, 1946.¹

3. No question concerning representation of employees of the Employer exists within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, under the following circumstances:

The Employer is a corporation engaged in steel tank and culvert fabrication, and general fabrication of allied metal products.

On October 16, 1943, as the result of a consent election, the Intervenor was established as bargaining representative of the Employer's production and maintenance employees.

*Houston, Reynolds, and Gray

¹ *Matter of Willborn Brothers Co., Inc.*, Case No. 16-R-2019

77 N. L. R. B., No. 160.

On November 11, 1946, the Employer and Intervenor executed a collective bargaining contract for the term of 1 year with a provision for renewal for the succeeding annual period, unless written notice to modify or terminate was given by either party at least 30 days prior to November 10, 1947. The contract may be renewed for successive annual periods in the event written notice is not given by either party prior to November 10th of any year that changes are desired.

Between September 29 and October 3, 1947, and again on October 11, 1947, the Petitioner notified the Employer that the majority of employees no longer desired the Intervenor to represent them, and advised the Employer of his intent to file a decertification petition.

On October 11, 1947, the Intervenor, by letter, asked the Employer to meet for a discussion of a few of the clauses of the contract. The purpose of the discussion was to clarify the interpretation of certain provisions concerning certain employment situations.

On October 15, 1947, the instant petition was filed.

The Intervenor contends that the letter of October 11 did not constitute a notice to modify or to terminate; and that, therefore, the contract was automatically renewed and is a bar to the instant proceeding.² The Petitioner contends that the notice given by the Petitioner to the Employer served to stay the automatic renewal clause; that the Intervenor's letter served to open the contract; and that, therefore, the contract is no bar.

The testimony regarding the circumstances leading to the Intervenor's letter of October 11 is in conflict. Whether or not certain employees desired that the contract be altered, it seems clear that the Intervenor did not intend, or take, affirmative action to alter the terms of the contract or to give notice to terminate. We, therefore, find that the contract was automatically renewed.

In resolving the issues of "contract bar" in decertification cases, the Board applies the same rules as have been and still are applied with respect to petitions for investigation and certification.³ A contract automatically renewed for a reasonable term within the certification year is a bar to a petition for certification of representatives, even though notice of a rival claim is given and the expiration date of the original contract may be after the certification year.⁴ We shall apply the same principles to a decertification petition.

² We find no merit in the Intervenor's contention that the 60-day period provided for in Section 8 (d) (1) of the amended Act, renders the 30-day automatic renewal provision in the existing contract inoperative. *Matter of International Harvester Company*, 77 N. L. R. B. 242.

³ *Matter of Snow and Nalley Company*, 76 N. L. R. B. 390, and *Matter of International Harvester Company*, *supra*, note 2.

⁴ *Matter of Texas Paper Box Manufacturing Company*, 75 N. L. R. B. 799.

In the instant proceeding the automatic renewal date of the contract was within the certification year. Because no notice to modify or terminate was given by either party to the contract, the contract was renewed within the certification year and is a bar to the instant petition. We shall, therefore, dismiss the petition for decertification, without prejudice, however, to filing of a new petition prior to the next automatic renewal date of the contract.

ORDER

On the basis of the above findings of fact and conclusions of law, the petition for decertification is hereby dismissed without prejudice.