

they could not agree whether certain employees should be classified as production employees. The Petitioner would include the sewing machine mechanic; the Employer would exclude him, contending that he is not a production but a maintenance employee. As the duties of this mechanic are primarily the oiling and repairing of the production machines, we find that he is a maintenance employee and will exclude him. The Petitioner wants the shipping clerk, the janitor, and the part-time janitor excluded because they are not within its jurisdiction. The Employer contends they should be included as production employees. The shipping clerk works in the stockroom and also in an area that is a part of the production department. In addition to performing the usual duties associated with his job classification, he also places stock on the stockroom shelves and into cartons for shipment. We find that he is a production employee and will include him. The janitor spends only about 25 percent of his time at his janitor duties, and the other 75 percent helping the shipping clerk. The latter duties involve carrying boxes, packing and sealing cartons, receiving goods, and doing regular department work. As the janitor spends a major portion of his time in production work, we will include him. However, as the part-time janitor works at exclusively janitorial tasks, we will exclude him as a maintenance employee.

Accordingly, we find that all production employees at the Employer's plant at 1005 East 14th Street, Los Angeles, California, including the shipping clerk and janitor, but excluding the sewing machine mechanic, the part-time janitor, guards, and supervisors constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

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ALLEN V. SMITH, INC. and CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
PETITIONER. *Case No. 19-RC-826. September 18, 1951*

### Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Julius N. Draznin, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Reynolds].

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:

The Employer and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 551, AFL, herein called the Intervenor, contend that their current contract constitutes a bar to this proceeding. The Petitioner contends that the contract is a premature extension of an earlier agreement, and therefore cannot operate as a bar to a petition timely filed with relation to the original contract term.

The record shows that on July 20, 1948, the Employer and the Intervenor entered into a contract, to be effective from July 1, 1948, until June 30, 1949, "and from year to year thereafter, unless either party opens the contract by written notice to the other party at least sixty (60) days prior to the anniversary date of the contract." On April 28, 1949, the Intervenor gave notice to the Employer of its desire to open the contract for adjustment of hours, wages, and working conditions. Thereafter, from time to time during 1949 and 1950, the parties engaged in bargaining negotiations, but no further agreement was executed until January 1951. In the interim, the Employer continued to give effect to the provisions of the 1948 contract except that during 1949, by agreement with the Intervenor, it reduced the wage rates of the women employees. On January 26, 1951, the parties executed their current contract, which provides that "all the terms and provisions of the last written agreement entered into between the parties shall continue in full force and effect, excepting that the modifications as hereinafter contained shall supersede the provisions in such prior agreement which they are intended to modify."<sup>1</sup> By its terms, this contract is to continue until June 30, 1952, and from year to year thereafter in the absence of 60-day written notice by either party. On April 27, 1951, after the signing of the 1951 contract, the petition herein was filed.

The Petitioner argues that the 1948 contract was automatically renewed in 1949 and 1950 and was prematurely extended, in January 1951, by the execution of the present contract. We find, however, that the notice given by the Intervenor to the Employer on April 28, 1949, effectively forestalled automatic renewal of the 1948 contract, and that

<sup>1</sup>The modifications related to wages and vacations.

it therefore expired on June 30, 1949, in accordance with its terms. Accordingly, we reject the Petitioner's contention that the present contract constitutes a premature extension of the 1948 contract.

As the Petitioner filed its petition after the execution of the current contract, the latter would ordinarily be a bar. The Petitioner contends, however, that the contract cannot serve as a bar because it contains an illegal union-security provision. The provision in question, which was contained in the 1948 contract and was incorporated by reference in the 1951 contract, is as follows:

1. The Employer agrees to keep in his employ only members in good standing with the Union. New employees not holding membership in the Union at the time of their employment shall make application within fifteen (15) days after having been employed. Such new employees shall become Union members within forty-five (45) days as a condition of their continued employment.

The first fifteen (15) days aforementioned shall be considered a trial period and any employee may be discharged by the first party during the said fifteen (15) days trial period for any reason whatsoever.

However, the contract specifically states that

Paragraph One of this agreement [the union-security provision] has been entered into subject to the requirements of the Labor Management Relations Act of 1947 or any amendments thereto. Upon compliance of the provisions of the said Act the said provisions of Paragraph One is to continue in full force and effect.

In our opinion, this language defers operations of the union-security provision until the requirements of the Act with respect to a union-shop election shall have been met. No union-security election has ever been held. At the present time, therefore, the union-security provision is inoperative, and therefore does not render the contract ineffective as a bar to an election.<sup>2</sup>

Accordingly, as the current contract between the Employer and the Intervenor will not expire until June 30, 1952, we find that it is a bar to a present determination of representatives. We shall therefore dismiss the petition.

### Order

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

<sup>2</sup> *H. Muehlstein and Co.*, 93 NLRB 1273.