

into union-security agreements with employers, the Petitioners' contract bar contention has become without merit.<sup>3</sup> We find that the existing contract between the Employer and UAW-AFL is a bar to the petition herein. Accordingly, we shall dismiss the petition.<sup>4</sup>

### Order

IT IS HEREBY ORDERED that the petition filed by the International Association of Machinists, Local Lodge No. 778, AFL, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 41, AFL, jointly, be, and it hereby is, dismissed.

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

<sup>3</sup> We distinguish those cases where we have held that contracts with unauthorized union-security provisions which the *parties* sought to correct or suspend after the filing of a representation petition are no bar to a determination of representatives *Brodhead-Garrett Co.*, 96 NLRB 669; *Allen Wales Adding Machine Division of the National Cash Register Company*, 94 NLRB 1288; *Wetlaufer Manufacturing Corporation*, 89 NLRB 696.

<sup>4</sup> In view of the fact that the proviso contained in the union-security clause effectively defers application of the clause, *Member Reynolds* finds that the existing contract between the Employer and the UAW-AFL constitutes a bar to this proceeding. He therefore considers it unnecessary to pass upon the effect of the recent amendment to the Act upon the contract bar issue

KIMEL SHOE COMPANY, PETITIONER *and* UNITED SHOE WORKERS OF AMERICA, CIO. *Case No. 21-RM-178. November 27, 1951*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before George H. O'Brien, 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 organization involved claims to represent employees of the Employer.
3. The Employer, the Petitioner herein, seeks a determination of the bargaining representative of production and maintenance employees at its Los Angeles, California, shoe manufacturing plant. The Union moves to dismiss the petition, contending that it has expressly disclaimed all interest in the employees covered by the petition and that a question concerning representation therefore does not exist.

The pertinent facts relative to the instant petition and the Union's alleged disclaimer are as follows:

97 NLRB No. 14.

On February 8, 1951, and again on February 13, 1951, representatives of the Union met with representatives of the Employer in unsuccessful attempts to obtain from the Employer a collective bargaining contract or a recognition agreement for production and maintenance employees at the Employer's Los Angeles, California, plant. On each occasion the Employer told them that it would prefer to have the question concerning representation of its employees settled by an election. On neither occasion, however, did the Union's representatives claim that the Union represented a majority of the employees concerned.

On February 13, 1951, shortly after the close of the second meeting noted above, the Union called a strike of the cutting department employees at the plant and established a picket line around the plant. On February 14, 1951, the Employer filed the instant petition. The strike and picket line were in progress on July 7, 1951, the last day of the hearing in this proceeding.

On February 26, 1951, the Union filed charges in Case No. 21-CA-1045 against the Employer, alleging violations of Section 8 (a) (1) and 8 (a) (3) of the Act.

During the period from February 13, 1951, pickets at the Petitioner's plant used the following signs:

1. "Our boss won't talk so we walk."
2. "Kimel Shoe on strike."
3. "Kimel Shoe on Strike. USWA CIO, Local 122."
4. "Unfair to organized labor."
5. "Kimel Shoe Company on strike."
6. "Kimel Shoe Company on strike and unfair to organized labor."
7. "Demand contract be signed, United Shoe Workers."

On April 13, 1951, the Union sent the following telegram to the Employer:

You are hereby notified that due to the unfair labor practices committed by you the Union is unable to maintain at this time a claim for representation in your factory in the appropriate unit. Therefore it hereby unequivocally and expressly disclaims any and all interest in representation of the production unit of your present employees and any current right to recognition as the collective bargaining representative.

On April 14, 1951, the day after the transmittal of the disclaimer telegram, picket signs numbered 1 and 7, above, were removed from the picket line on orders of the Union's international representative in charge of organizing the Employer's factory.

On April 24, 1951, following a settlement agreement, the Union withdrew the afore-mentioned unfair labor practice charges.

On or about May 1, 1951, picket sign numbered 1, above, reappeared on the picket line and remained there for a period of approximately 3 weeks until after May 21, 1951, at which time it was again removed.<sup>1</sup>

On May 6, 1951, pickets walked in front of Mr. Kimel's home bearing the following signs:

8. "Kimel Shoe on strike, Local 122, USWA CIO."
9. "Morris Kimel lives here."
10. "Kimel Shoe Company on strike, USWA Local 122, CIO."
11. "Mr. Kimel, can't you see? Workers need union security. USWA Local 122, CIO."
12. "Life can be happy, Morris K. Try making shoes the Union way. USWA Local 122, CIO."
13. "Morris Kimel won't talk so we walk. United Shoe Workers of America, Local 122, CIO."

It is now well established that when a union has clearly and unequivocally withdrawn its claim of majority representation, no question concerning representation exists to support an employer's representation petition.<sup>2</sup> And this Board has held that picketing which is directed at organizing the employees for future representation is not necessarily inconsistent with a prior unequivocal disclaimer.<sup>3</sup> In the instant case, however, as noted above, the Union's picketing involved the continued and regular use, for substantial periods of time, of signs referring to the Employer's alleged refusal to recognize the Union. By such conduct the Union reaffirmed its claim to majority representation and thereby cast doubt on the meaning and purposes of its earlier disclaimer. In such circumstances we believe that the policies of the Act will best be served by directing an election, and we accordingly deny the Union's motion to dismiss the instant petition.<sup>4</sup>

A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. We find, in accordance with the agreement of the parties, that all production and maintenance employees at the Employer's Los Angeles, California, shoe manufacturing plant, excluding office clerical employees, guards, and supervisors, constitute a unit appro-

<sup>1</sup> The Union's international representative testified that, during this period of reappearance of sign 1, he was absent from the picket line because of illness. Without his knowledge or consent, this sign was returned to the picket line by the picket captain. The union business agent testified that 3 weeks later he spotted the sign on the picket line and removed it therefrom.

<sup>2</sup> *Hamilton's Ltd.*, 93 NLRB 1076, and cases cited therein.

<sup>3</sup> *Hamilton's Ltd.*, *supra*; *Smith's Hardware*, 93 NLRB 1009.

<sup>4</sup> *Coca-Cola Bottling Co. of Walla Walla, Washington*, 80 NLRB 1063.

priate 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.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

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OLIN INDUSTRIES, INC., WINCHESTER REPEATING ARMS COMPANY DIVISION and THE WINCHESTER CLUB, INC. and AMERICAN FEDERATION OF LABOR. *Case No. 1-CA-436. November 29, 1951*

### Decision and Order

On May 29, 1951, Trial Examiner George Bokar issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent, Olin Industries, Inc., Winchester Repeating Arms Company Division, hereinafter called Olin Industries, had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondent, The Winchester Club, Inc., had not been timely served with a copy of the charge as required by Section 10 (b) of the Act, and therefore recommended that the complaint, with respect to it, be dismissed. Thereafter, Olin Industries filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings and recommendations of the Trial Examiner, with the following exceptions, additions, and modifications.

The initial charge in this case naming Olin Industries was filed and served on May 16, 1949. Because of the limitation period in Section 10 (b) of the Act,<sup>1</sup> the complaint which might issue based upon

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<sup>1</sup> The relevant portion of Section 10 (b) reads:

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .