Order

A majority of the valid ballots counted having been cast against the Petitioner, it is hereby ordered that the petition herein be, and it hereby is, dismissed.

AMERICAN CYANAMID COMPANY, CALCO CHEMICAL DIVISION *and* UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 9–RC–1328. February 7, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Richard C. Curry, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

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 certain employees of the Employer.[2]

3. On February 6, 1948, following a stipulation for certification upon consent election, the Intervenor was certified as the exclusive bargaining representative of the production and maintenance employees of the Employer.[3] On March 17, 1948, the Intervenor was authorized to enter into a union-security agreement with the Employer for its production and maintenance employees.[4] Commencing in 1948, the Employer and the Intervenor have had continuous contractual relations culminating in the current contract, which was executed on May 11, 1950. On November 20, 1950, this contract was amended, and, as amended, is effective until May 17, 1952.

On August 22, 1951, the Petitioner asked the Employer for recognition as the bargaining representative of the Employer's production and maintenance employees. The Employer made no reply, and on August 23, 1951, the Petitioner filed the instant petition for certification.

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[1] The Intervenor, in its brief, renewed its motion made at the hearing, which the hearing officer overruled, that the testimony of Donald Sandford as to the average attendance at meetings of the Intervenor be stricken from the record on the ground that it was hearsay. As we have not relied upon this testimony in reaching our decision herein, we do not consider it necessary to pass upon the motion.

[2] International Chemical Workers Union, Local 275, AFL, was permitted to intervene on the basis of its current contract with the Employer.

[3] 9–RM–11.

[4] 9–UA–154.

The Employer and the Intervenor assert that their current contract constitutes a bar to this proceeding. The Petitioner contends that the contract cannot operate as a bar because (1) a schism in the membership of the Intervenor creates a doubt of the continued representation by the Intervenor of the employees involved herein, and (2) it contains a union-security clause which exceeds the limited form of union security permitted by Section 8 (a) (3) of the Act.

The Intervenor holds regular meetings at monthly intervals on the last Thursday of each month. A regular meeting was held on September 27, 1951, attended by approximately 78 members.[5] At this meeting, a motion to disaffiliate from the Intervenor was presented. The motion was ruled out of order by the chairman, and a motion to appeal from the ruling of the chairman was also ruled out of order. A motion was then made that a meeting be held the next morning at which the motion to disaffiliate could be voted upon, and this motion was also ruled out of order. The meeting was then adjourned by the chairman. The chairman and other officers of the Intervenor then left the hall, and approximately 73 members remained.

These members having elected one of their number as temporary chairman and another as temporary recording secretary, a motion to disaffiliate from the Intervenor and to affiliate with the Petitioner was passed unanimously.

It appears that each department of the plant has a steward to handle grievances in that department, and that there are eight departments in the plant. Subsequent to the meeting of September 27, 1951, the stewards were asked to resign their positions, and seven of the eight stewards did so, and, 1 day before the hearing in this case, these stewards were elected by their respective departments as committeemen of the Petitioner to handle employee grievances.

While these circumstances indicate some disaffection among the members of the Intervenor, we do not believe that the foregoing circumstances demonstrate that the bargaining relationship has become so confused as to warrant the application of the Board's "schism" doctrine as set forth in the case of *Boston Machine Works* (89 NLRB 59). There was no such basic intraunion conflict here as there was in the *Boston Machine* case. Neither the disaffection of the stewards nor the motion to affiliate with the Petitioner following the adjournment of the Intervenor's formal meeting is, in our opinion, sufficient to support a finding of schism in this case.[6]

The Petitioner contends, further, that the current contract exceeds the limited form of union security permitted by Section 8 (a) (3) as

[5] The record indicates that the total membership of the Intervenor at that time was approximately 254. It does not appear that any notice was given the members that any proposal to disaffiliate from the Intervenor would be considered at this meeting.

[6] See *Saginaw Furniture Shops, Inc.*, 97 NLRB 1488; *Boyle-Midway, Inc.*, 97 NLRB 895.

it does not permit a 30-day escape period for (1) employees who become members of the Intervenor after the contract became effective or (2) employees who were members of the Intervenor when the contract became effective.

The contract contains the following union-security provisions:

> All employees who, on May 16, 1950, are members of the Union in good standing in accordance with its constitution and by-laws, and all employees who voluntarily become members after that date, shall, as a condition of employment, maintain their membership in the Union through the prompt payment of dues, for the duration of this contract.

We find this contention without merit. The contract does not require any employees to *become* members of the Intervenor.[7] For reasons set forth in the *Charles A. Krause* case,[8] the fact that the contract contains no 30-day escape clause for old employees who were members on the effective date of the maintenance-of-membership clause is not material to the validity of the contract as a bar. We find that the existing contract between the Employer and the Intervenor is a bar to the petition herein. Accordingly, we shall dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed by United Gas, Coke and Chemical Workers of America, CIO, be, and it hereby is, dismissed.

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

[7] *Southland Paper Mills, Inc.*, 97 NLRB 896.
[8] *Charles A. Krause Milling Co.*, 97 NLRB 536.

ANDREWS COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Case No. 10–RC–1611. February 7, 1952*

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 Charles M. Paschal, Jr., 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 [Members Houston, Murdock, and Styles].