that the majority apparently are not only proceeding on the contrary assumption but go even further and hold that because in their view the Regional Director disobeyed the clear mandate of our Rules, he is permitted to exercise an authority to reinstate a petition which he would not have possessed had he abided by our Rules.

WEST STEEL CASTING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 8–RC 1439. February 19, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Charles A. Fleming, 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 Murdock and Styles].

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.[1]

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 Petitioner seeks a unit of production and maintenance employees at the Employer's steel castings and wheel manufacturing plant at Cleveland, Ohio. International Molders & Foundry Workers Union of North America, Local 244, the Intervenor herein, contends that its current contract with the Employer operates as a bar to the instant petition. The Petitioner, in reply, alleges that the contract is not a bar (1) because of an illegal union-security clause in the contract and (2) because of a schism within the Intervenor's local organization. The Employer takes no position with respect to the contract bar issue.

The Union-Security Clause

On June 9, 1951, the Employer and the Intervenor entered into a contract effective for a period of 1 year and containing a provision

[1] We find, contrary to the contention of the Petitioner, and in view of the facts set forth below, that the Intervenor herein is a currently existing and functioning labor organization, within the meaning of the Act. *Twentieth Century-Fox Film Corporation*, 96 NLRB 1052.

that if either party to the contract shall desire to renew the same, it shall notify the other in writing 60 days prior to the termination date of the contract. The contract contains the following union-security clause:

> All employees who, on the date of execution of this agreement, are members of the Union in good standing in accordance with the constitution and bylaws of the Union, and all employees who may thereafter become members, shall, as a condition of employment, remain members of the Union in good standing for the duration of the Contract, provided loss of good standing under this article is limited to termination of membership for failure to pay regular monthly dues.

The contract does not require any employee to become a union member. For reasons set forth in *Charles A. Krause Milling Co.*,[2] the legality of the contract is unimpaired by the fact that it contains no 30-day escape clause for employees who were members of the Intervenor on the date of execution of the contract or thereafter. Nor, for reasons set forth in *Davis Motor Company, Inc.*, is the legality of the contract impaired by the fact that the execution of the union-security clause was not preceded by a union-shop authorization election, the requirement for such an election having been eliminated by a recent amendment to the Act.[3] We therefore find no merit in the Petitioner's first contention.

Schism

On August 26,1951, a special meeting of the Intervenor was called by its president with the approval of its shop committee. Although the meeting was advertised on the Employer's bulletin board, the purpose of the meeting was not therein stated; shop committeemen, however, by word of mouth, informed several of the members of the purpose of the meeting. The meeting, held in a private hall which had not been used for meetings of the Intervenor for more than 4 years, was attended by 73 of the 165 to 180 members of the Intervenor at the Employer's plant, including nearly all the officers of Local 244.[4] Officials of the Petitioner were present by invitation. At the meeting an employee, not then a member of the Intervenor, presented motions to the effect that Local 244 disaffiliate from the Intervenor's International and that the employees present affiliate with the Petitioner,

[2] 97 NLRB 536.

[3] Public Law 189, 82nd Cong, Chap. 534, 1st Sess. *Davis Motor Company, Inc.*, 97 NLRB 125.

[4] Ten to twenty employees attend regular meetings.

which motions were carried by a standing vote of 72 to 0, with 1 abstention.

Since August 26, 1951, the date of the aforesaid meeting, Local 244 has continued to perform several of the usual functions of a labor organization, including the collection of dues, the handling of grievances by members of the shop committee in accordance with the terms of the current contract between the Employer and the Intervenor, the holding of a membership meeting at which new officers were elected, the submission of the books of Local 244 to the International for auditing, and the maintenance of a bank account in the name of Local 244. On the other hand, although certain of the dissident employees who attended the August 26 meeting later individually joined the Petitioner, these employees have not, since that date, sought a charter from, or functioned as a group affiliated with, the Petitioner; furthermore, at no time since the August meeting has this group or the Petitioner notified the Intervenor's International of the disaffiliation action taken at the meeting.

The Petitioner contends that the foregoing events have given rise to such confusion and uncertainty with respect to the status of the bargaining representative at the Employer's plant as to warrant our directing an election at this time under the "schism doctrine" as enunciated in the *Boston Machine* case.[5]

However, in this case, as in the recent *Saginaw* case,[6] the circumstances are not such as to persuade us that an exception to the contract bar rule would serve any purpose, other than to permit a dissident group of members to express their dissatisfaction with the bargain made by the Intervenor holding the contract. For the reasons more fully stated in the *Saginaw* decision, we shall not apply the "schism doctrine" in this case, and we therefore find no merit in the Petitioner's second contention.

Under these circumstances, we find that the current contract between the Employer and the Intervenor operates as a bar to an immediate determination of representatives, and we shall therefore dismiss the instant petition.[7]

Order

IT IS HEREBY ORDERED that the instant petition be, and the same hereby is, dismissed.

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[5] *Boston Machine Works*, 89 NLRB 59.

[6] *Saginaw Furniture Shops, Inc*, 97 NLRB 1488.

[7] In view of our decision herein, we find it unnecessary to consider the Intervenor's motion to reopen the record or the other contentions of the parties with respect to other issues in the case.