

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]

ALLIED CONTAINER CORPORATION *and* UNITED PAPERWORKERS OF AMERICA, CIO., PETITIONER. *Case No. 1-RC-2497. March 12, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lee J. Halloran, 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 power 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.
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 the Intervenor, Local 13521, District 50, United Mine Workers of America, assert that a collective bargaining contract which they signed on July 28, 1950, effective to July 31, 1952, is a bar to this proceeding. The Petitioner contends that the contract is not a bar because of (a) a schism within the contracting union, and (b) the defunctness of that union.

Following the Intervenor's winning of a State-conducted election among the Employer's production and maintenance employees, the Employer and the Intervenor entered into the contract asserted to be a bar. In July 1951 the contracting parties signed a supplement granting a wage increase subject to approval of the Wage Stabilization Board.

On October 13, 1951, the members present at a regular meeting of the Intervenor, attended by approximately one-half of the total membership, voted unanimously to disaffiliate from the Intervenor and affiliate with the Petitioner.¹ All officers of the Intervenor joined in the disaffiliation movement. International representatives of Dis-

¹ A posted announcement of the meeting did not state that one of its purposes was to vote on a change of affiliation. However, word that such action would be taken at the meeting was spread by word of mouth

trict 50 have nevertheless processed the application for a wage increase through the Wage Stabilization Board, and continued to attend weekly grievance meetings with the Employer and even to be present at regular monthly meetings of the new group, until ordered out at the January 1952 meeting.

The contract bar rule sets forth that the Board will not entertain a rival petition for the conduct of a representation election in midterm of a valid subsisting bargaining contract of reasonable duration. The rule represents a compromise between the desirability of permitting employees to change their bargaining representatives at will and the stability which is necessary for the effective conduct of labor relations.

But if the rule is to serve its purpose, care must be taken that in providing for necessary exceptions, the rule itself is not left an empty sieve. In a very recent case,² the Board expressed its fear that the rule was being undermined by too broad an application of the so-called schism exception. The Board there indicated that henceforward it would not permit the schism doctrine to be used to facilitate raiding by a rival union.

Examining the facts of the present case, we find merely a situation in which some employees, dissatisfied with their representation, desire to make a change at a time generally considered inappropriate by the Board. The fact that they have expressed that dissatisfaction in formalized action, is not by itself sufficient reason for making an exception to the normal contract bar rule.

The Petitioner also contends that the Intervenor is defunct. This the Intervenor denies. Since the disaffiliation action, representatives of the Intervenor have processed the application for a wage increase through the Wage Stabilization Board and have been present at, and participated in, weekly grievance meetings with the Employer. The Intervenor's charter has not been returned to District 50 and the dissident group has drawn on the checking account in the Intervenor's name to pay meeting hall rental charges. Finally, not all the Intervenor's members at the time of the disaffiliation action have withdrawn and joined the Petitioner. On these facts, we are not satisfied that the Intervenor is defunct.

As the existing contract will not expire until July 31, 1952, we find that it is a bar to the present petition. We shall therefore dismiss it, without prejudice to a timely refileing.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

² *Saginaw Furniture Shops, Inc*, 97 NLRB 1488