

WE WILL NOT engage in any acts in any manner interfering with the efforts of TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 144, A. F. L., to negotiate for, or represent, the employees in the bargaining unit described above.

MID-CONTINENT PETROLEUM CORPORATION,  
Employer.

By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

WORTHINGTON PUMP AND MACHINERY CORPORATION and INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS AND MAINTENANCE MEN, LOCAL 55, PETITIONER. *Cases Nos. 2-RC-2433 and 2-RC-2498. May 19, 1952*

**Supplemental Decision and Order**

On February 28, 1951, the Board issued its Decision and Direction of Elections in the instant case, finding that the contract<sup>1</sup> between the Employer and the United Steelworkers of America, CIO, and its Local No. 1833, herein referred to jointly as the Intervenor and separately as the International Union and Local No. 1833, contained an unlawful union-security clause and therefore was not a bar to the proceedings.<sup>2</sup> In so deciding, the Board found it unnecessary to pass upon the other contract bar issues involved in the case. On March 20, 1951, the Board denied the motions of the Employer and the Intervenor to reconsider its decision. On March 30, 1951, elections were held; the Petitioner obtained a majority of the valid votes cast in the two units found appropriate, one consisting of powerhouse employees, the other of yard service employees. As the result of court litigation instituted thereafter by the Employer challenging the legality of the Board's holding that the contract was not a bar,<sup>3</sup> the Petitioner was not certified.

On December 31, 1951, the Board issued its decision in *Charles A. Krause Milling Co.*,<sup>4</sup> holding that the *Worthington Pump* decision

<sup>1</sup> The contract in question, dated June 15, 1950, was for a 2-year term, with a 60-day automatic renewal clause.

<sup>2</sup> 93 NLRB 527.

<sup>3</sup> 97 F. Supp. 656 (D. C. S. D. N. Y.).

<sup>4</sup> 97 NLRB 536.

99 NLRB No. 24.

was erroneous to the extent that it had held that a union-security contract is not a bar unless it provides a 30-day grace period for employees who were members of the union on the effective date of the contract. On January 22, 1952, the Board issued a notice to show cause in the instant proceeding, affording all parties an opportunity to show:

why the Board should not reconsider its finding that the contract is not a bar in the light of [*Krause Milling*] and why it should not take such action on the record in this proceeding, as may be appropriate.

On March 11, 1952, the Board's Executive Secretary informed the parties by letter that the notice to show cause embraced not only reconsideration of the Board's decision in the light of the *Krause Milling* holding, but also "all other aspects of the contract bar issue raised and litigated in this proceeding." All parties filed replies. As the record, briefs, and replies to the notice to show cause adequately present the issues involved, the requests for oral argument by the Petitioner and the Employer are hereby denied.

Upon the entire record in this case, the briefs, and the replies to the show cause notice, the Board makes the following supplemental findings:

1. The Petitioner opposes application of the rule in *Krause Milling*, on the ground that its certification is mandatory following the results of the elections. However, certification is not a ministerial act, and the Board may refuse to certify a successful union where, upon its own motion or other proper procedures, the legality of any stage in a representation proceeding is called into question.<sup>5</sup> As certification has not issued herein, the question concerning representation has not been finally determined and remains subject to reconsideration. In view of our express reversal in *Krause Milling* of the basis for the original 1951 finding that the contract herein involved was not a bar, failure now to reconsider our decision in the light of present policy would serve to perpetuate an error. Accordingly, we shall apply the *Krause Milling* rule herein. The union-security clause of the existing contract is therefore found to be valid, and the contract a bar to the two petitions herein on that ground.

We must next ascertain whether the Petitioner's requests for recognition were timely made with respect to the execution date of the contract. The history of bargaining between the Intervenors and the Employer discloses that from 1942 contracts were entered into by the "United Steelworkers of America, C. I. O., on behalf of" Local

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<sup>5</sup> See *Inland Empire District Council v. Millis*, 325 U. S. 698, 707; *Warehousemen's Union v. N. L. R. B.*, 12 F. 2d 84, 94, cert. den., 314 U. S. 674.

Union No. 1833. The contracts were signed by the president and secretary-treasurer of the International Union, officials of Local Union No. 1833, and the director and the representative of District No. 2 of the International Union. The constitution of the International Union provides that the International Union shall be the contracting party in all collective bargaining agreements and that such agreements shall be signed by the International officers defined as the president, secretary-treasurer, and vice president.

Beginning in April 1950 negotiations on the terms of a new contract were conducted for the Intervenors by the negotiating committee of Local No. 1833 and a representative of the International Union assigned to District No. 2. An agreement incorporating the changes made in the prior contract was initialled on June 13 by the employer representative, Local Union No. 1833 officials, and the International Union representative, and was ratified by the employees at a union meeting. On June 14 copies of the contract were made and on June 15 the contract was formally signed by the individuals who had previously affixed their initials. Later the same afternoon, the district director of the International Union added his signature to the contract and sent it to the headquarters of the International Union for signature by the International Union officers. In accordance with past practice, the Employer placed in effect the changes called for by the new contract on June 15, the expiration date of the previous contract, without waiting for the signatures of the International Union officers. Sometime in June the contract was returned signed by the International Union president and secretary-treasurer.

On June 14 the Petitioner made a telephonic request upon the Employer for recognition on behalf of the powerhouse employees, and filed its petition for this unit late in the afternoon of June 15.

The Petitioner contends that no validly executed contract existed until signed by the International Union officers, and therefore that its oral request of June 14, followed by the filing of a petition on June 15, prevented the subsequent contract from being a bar. The Employer and the Intervenors maintain that there existed an agreement on June 13 which was adequate to bar the petition.

The Board has held that later execution of a formal instrument does not impair the contractual validity of an informal but written and signed record of the entire understanding between the parties, and further, that the signatures may be adequately subscribed by the use of initials.<sup>6</sup> In the circumstances of this case, we find that on June 13 there existed a written, signed document sufficiently comprehensive to stabilize bargaining relations. The question arises whether,

<sup>6</sup> *Super Service Motor Freight Co., Inc.*, 98 NLRB 444; *Bemis Bros. Bag. Co.*, 97 NLRB 1.

in the absence of any requirement in the contract that to be validly executed it had to be signed by International Union officers, the union constitution imposed such a requirement.<sup>7</sup> We think not.

It is clear that in practice the parties regarded the signature of the International Union representative as sufficient to place the terms of the agreement in effect. Moreover, under the union constitution, an international representative is appointed by the president to aid in carrying out the affairs of the International Union, one of which is to participate at the local union level in the negotiation of bargaining contracts to which the International Union is a party. It is apparent therefore that a literal construction of the provisions of the union constitution in question would be inconsistent with the manner in which the Intervenors themselves construed these provisions.<sup>8</sup> In these circumstances, we do not read the union constitution as denying the apparent authority of the International Union representative, as an agent of the president, to bind the International Union contractually.<sup>9</sup> Furthermore, we are convinced that stability of bargaining relations, an objective of contract bar rules, would be promoted by refusing to permit such an agreement to be vulnerable to rival union claims during the delays inherent in obtaining the signatures of the international officers who were not present where the agreement was negotiated and signed by their agent. We conclude therefore that on June 13 there existed a validly executed agreement, which preceded the oral request of the Petitioner on June 14 and consequently barred the petition filed on June 15.

3. The petition for yard service employees, which was not filed until July 10, constituted a claim for a unit embracing classifications of employees substantially different from the employees sought in the first petition. The July 10 petition was therefore a new petition as to which the contract of June 13 constituted a bar.<sup>10</sup>

Upon the basis of the foregoing findings and the entire record in this case, we conclude that the contract between the Intervenors and the Employer barred the determination of representatives. We shall therefore set aside the elections conducted on March 30, 1951. However, in view of all the circumstances in these particular proceedings, including the original decision which was later reversed, the extended court litigation, and the delays arising from our reconsideration, resulting in the inability of the Petitioner to establish its status as bargaining representative, the Board is of the opinion that equities exist

<sup>7</sup> Cf. *Filtration Engineers, Incorporated*, 98 NLRB 1210; *Electro Metallurgical Company*, 72 NLRB 1791.

<sup>8</sup> See *New Jersey Oyster Planters and Packers Association, Inc.*, 98 NLRB 1187.

<sup>9</sup> *New Jersey Oyster Planters and Packers Association, Inc.*, *supra*; cf. *Avco Manufacturing Corporation*, 97 NLRB 645.

<sup>10</sup> *American Suppliers, Incorporated*, 98 NLRB 692; *Hyster Company*, 72 NLRB 937.

in favor of the Petitioner which call for modification of the usual contract bar rules in this case. Accordingly, although the April 15, 1952, automatic renewal date of the agreement has passed, we dismiss the petitions herein without prejudice to the right of the Petitioner to file a new petition timely with respect to the June 15, 1952, *expiration* date of the contract.

### Order

IT IS HEREBY ORDERED that the elections conducted on March 30, 1951, be, and they hereby are, set aside and that the petitions filed herein be, and they hereby are, dismissed without prejudice to the right of the Petitioner to file a new petition at any time before June 15, 1952.

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BARBER MOTORS, INC., BENNETT YURICK BUICK, INC., B. W. BLAUSHILD MOTORS, INC., BLAUSHILD MOTOR CO., BROADWAY BUICK SALES & SERVICE, INC., BROOKLYN CHEVROLET CO., BROWNLEE CHEVROLET, INC., TONY DITZ PONTIAC, INC., DORNER CHEVROLET CO., DOWNTOWN CHEVROLET MOTORS, INC., FORD AND PAE NASH, INC., FRANKEL CHEVROLET CO., GEIGER-SIRL, INC., GROFF-TRIPP, INC., GUTHERY-SCHREIBER CHEVROLET, INC., HEWITT CHEVROLET, INC., HIGHLAND OLDSMOBILE, INC., HIGH LEVEL MOTORS, INC., GEO. KEIPER MERCURY, INC., KINSMAN SQUARE CHEVROLET, INC., AL LAMAN MOTORS, INC., MEISEL MOTORS, METROPOLITAN BUICK, INC., MORRISON-BARNHART MOTORS, INC., MURRAY OLDSMOBILE CO., OHIO MOTORS CO., OLEN MOTORS, INC., PACKARD CLEVELAND, INC., SNYDER-GRIEDER BUICK CO., TILLMAN MOTOR CO., KEITH WEIGLE MOTORS, INC., WEST PARK CHEVROLET, INC., WEST SIDE PONTIAC, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 54, LODGE No. 1363, AFL, PETITIONER

MICHAEL'S INC.<sup>1</sup> and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 54, LODGE No. 1363, AFL, PETITIONER. *Cases Nos. 8-RC-1570 and 8-RC-1571. May 19, 1952*

### Decision and Direction of Elections

Under petitions duly filed, separate hearings were held before Henry G. Gieser and David C. Finlay, hearing officers. The hearing officers'

<sup>1</sup> The name of the Employer appears as amended at the hearing.