

WARD BAKING COMPANY *and* LODGE 1519, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER. *Case No. 8-RC-1689. November 19, 1952*

Decision and Direction of Elections

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Carroll Martin, 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 Peterson].

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.¹
3. The Intervenor asserts a current union-shop agreement between its Local No. 103 and the Employer as a bar to this proceeding. We find no merit in its position because, as is hereafter set forth, the union-shop provisions of the agreement are invalid.

The agreement in question is effective for a 1-year period beginning June 17, 1952. It resulted from the operation, prior to the filing of the petition herein, of an automatic renewal clause contained in a preexisting contract originally executed on July 15, 1941, and amended from time to time thereafter. Although the specific language of the current union-shop clause conforms to the substantive requirements of Section 8 (a) (3) of the Act,² Local No. 103 has been out of compliance with the filing requirements of Section 9 (f), (g), and (h) ever since September 30, 1949,³ including the date on which the contract became effective.

The recent amendments to the Act⁴ do not validate a union-shop contract unless the union party thereto "has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9 (f), (g), and (h)" of the Act.

¹ International Brotherhood of Firemen and Oilers, AFL, by its international representative, Norman F. Driscoll, intervened herein on behalf of the International and its Local No. 103 on the basis of claimed contractual interests.

² The union-shop provisions in the current agreement first appeared in the prior contract on or about September 8, 1951. Before that time, the parties were operating under different union-shop provisions agreed upon in July 1949.

³ We are administratively advised to that effect.

⁴ Public Law No. 189, 82d Congress, 1st Sess., (October 22, 1951).

In view of the Local's noncomplying status under the terms of the aforesaid provision, the union-shop contract cannot be deemed valid, and the contract therefore cannot operate as a bar.⁵

We find that a 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.

4. The Petitioner seeks a unit of the employees in the maintenance department, including the garage employees who have been unrepresented until now. The Intervenor contends that a unit including the garage employees is inappropriate, and that only a unit of maintenance employees which it has represented for the past 12 or 13 years is the appropriate unit. Nine maintenance employees, under the supervision of the chief engineer, constitute the maintenance department, and perform the usual duties of maintaining and repairing the plant machinery. There are nine garage employees, including mechanics, truck servicers, painter's helpers, and a truck washer, who work under the supervision of the garage superintendent. They are separately located and devote all of their time to the repair, maintenance, and servicing of the Employer's trucks. The garage employees have the same vacation benefits and sick leave as the maintenance employees, and, as a matter of company policy, receive all wage increases negotiated for the maintenance employees.

The fact that the garage employees' work is primarily of a maintenance character and that their interests in the terms and conditions of employment are similar to those of the maintenance employees, indicates that garage employees properly may be included in a broader unit with the other maintenance employees.⁶ However, the long and separate history of collective bargaining for the maintenance department employees supports the Intervenor's contention for a unit of maintenance department employees alone. In these circumstances, we shall follow established Board policy⁷ and permit both groups to express their desires on the question. Accordingly, we hold that the employees at the Employer's Youngstown, Ohio, plant, in the following voting groups, excluding office clericals, guards, professional employees, and supervisors as defined in the Act,⁸ may constitute either a single appropriate unit or, to the extent indicated, separate appropriate units depending upon the results of the elections herein-

⁵ *Mellin-Quincy Mfg. Co.*, 98 NLRB 457; *Fein's Tin Can Co., Inc.*, 99 NLRB 158.

Because of our decision on the invalidity of the contract, we find it unnecessary to decide whether or not a schism exists in Local 103 of the kind that would preclude application of the contract-bar doctrine.

⁶ See *Baking Industry Council*, 80 NLRB 1590.

⁷ *H. A. Satin & Company, Inc.*, 97 NLRB 1001; *Illinois Cities Water Company*, 87 NLRB 109.

⁸ The parties stipulated that the chief engineer and the garage superintendent are supervisors.

after directed: (1) All maintenance department employees; (2) all garage employees. If a majority in both voting groups vote for the Petitioner, they will be taken to have indicated a preference for one over-all maintenance department unit, and the Board, under the circumstances, finds such a unit to be appropriate for the purposes of collective bargaining. In the event the Petitioner or the Intervenor establishes a majority in voting group (1) alone, the Board finds the existing maintenance department unit to be separately appropriate.⁹

[Text of Direction of Elections omitted from publication in this volume.]

⁹The parties are agreed that the attendance of one employee, classified as an oven greaser, is so irregular as to make him ineligible to vote in an election. We find in accordance with the stipulation of the parties that the oven-greaser is not eligible to vote in the election.

BRIDGEPORT-LYCOMING DIVISION, AVCO MANUFACTURING CORPORATION
and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO, PE-
TITIONER. *Case No. 2-RC-4663. November 19, 1952*

Supplemental Decision and Direction of Election

On September 18, 1952, the Board issued a Decision and Direction of Elections herein, establishing two voting groups at the Employer's Stratford, Connecticut, plant: Group (a) comprising all technical and office clerical employees, and group (b) comprising all professional employees.¹ The Petitioner desires to have the Board amend this Decision and Direction by including in group (a) the plant clerical employees. The Employer opposes their inclusion.

Where, as here, there is disagreement between the parties as to the placement of plant clericals, it is the established practice of the Board to exclude them from units of office clerical employees.² However, they may appropriately become part of the Petitioner's existing production and maintenance unit if they and the Petitioner so desire.

Accordingly, we will direct a self-determination election in an additional voting group, which we will designate group (c), comprising all plant clerical employees at the Employer's Stratford, Connecticut, plant, excluding confidential employees, managerial employees, guards, and supervisors. If a majority of the employees in this voting group select the Petitioner, they will be taken to have indicated

¹ 100 NLRB No. 185.

² *Chrysler Corporation (Dodge Main Plant)*, 76 NLRB 55; *Wilson & Company*, 97 NLRB 1388.

101 NLRB No. 115.