

After careful consideration of all the facts and the arguments presented here, the Board concludes that its fronting doctrine, formulated as it was as a policy to discourage circumvention of the Act's filing requirements,³ should have no application to the question of contract bar presented here. In this connection we emphasize the fact that the International is the sole union party to the contract urged as a bar, that no question concerning its exclusive representation of these employees was raised at the time, and that the subordinate union entities alleged to have been "fronted for" later achieved compliance, before this proceeding was begun. We deem our decision in *Fein's Tin Can Co., Inc. and Atlas Can Corporation*, 99 NLRB 158, inapplicable in this situation. Accordingly, we find that the February 5, 1952, contract is a bar to a present determination of representatives.

[The Board dismissed the petition.]

Chairman Herzog took no part in the consideration of the above Decision and Order.

AMERICAN STORES COMPANY *and* LOCAL 804, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL, Petitioner. Case No. 5-RC-1245. June 30, 1953

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before Henry A. Segal, a hearing officer of the National Labor Relations Board. 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 National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, 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 National Labor Relations Act.
2. The labor organizations named below claim to represent employees of the Employer.
3. No question of representation 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:

Since 1938 the International Union of Operating Engineers, AFL, Locals Nos. 272 and 272A, the Intervenor herein, has bargained for the Employer's Zone No. 6 engineers and maintenance men in the Baltimore, Maryland, area. Beginning in 1948 the contractual unit has described these employees as

³See *Lane Wells Company*, 77 NLRB 1051, 79 NLRB 252

refrigeration mechanics, plant mechanics, bakery mechanics, and firemen. The chief plant engineer is also listed in the contract unit. The Petitioner now seeks to represent a unit confined to the 10 refrigeration mechanics, which group consists of 1 refrigeration shopman, 4 refrigeration roadmen, 1 refrigeration stock-control man, 2 refrigeration mechanics, and 2 chief refrigeration mechanics whom the parties stipulated to be working foremen, not supervisory within the meaning of the Act. These employees with refrigeration classifications constitute one-half of the contract unit. The other half consists of the plant group, with a chief plant engineer (stipulated by the parties as a nonsupervisory working foreman), 4 plant mechanics, and 2 firemen, and the bakery group, with a chief bakery mechanic (also stipulated by the parties as a nonsupervisory working foreman) and 2 bakery mechanics. The parties also stipulated, without testimony having been offered, that the zone engineer constitutes the sole supervisor for all these classifications.

Although these three groups punch separate time clocks because of the different points at which they report, they have the same working conditions and benefits. The plant group spends 99 percent of its time at its headquarters in the zone warehouse operating the boiler, the large ammonia-refrigeration system, an air-conditioning system, and various pumps, conveyors, and packaging machines. At least 4 of these 7 men are licensed engineers. One of them, who is not licensed, works only on electric floor trucks and transporting equipment.

The bakery group likewise spends 99 percent of its time in the bakery portion of the warehouse, maintaining ovens, mixing machines, slicing and wrapping machines, conveyors, and cooling and heating equipment relating to these functions. However, it appears that any refrigeration work that these 3 men do is of a minor character.

The refrigeration group reports at the shop across the street from the main warehouse and, as a group, spends about 80 percent of its time in work at retail stores of the Employer. Actually 7 of the 10 men do this outside work, which includes maintaining the refrigerating and air-conditioning systems, heating equipment, conveyors, and other electrical equipment in the individual stores. They also install refrigerating equipment in these stores and have installed air-conditioning equipment in some of them. They also help out on maintenance work of various kinds in the plant or bakery when necessary. The remaining 3 of these 10 men spend their time in the shop "coordinating part of the activity that is performed by the group." Admittedly a "majority" of their time is spent in what might be termed strictly refrigeration work. Presumably the remainder is spent in various mechanical repairs. One of these three is the stock-control man, who also acts as secretary to the zone engineer, and orders and maintains stock for refrigeration, plant, and bakery maintenance employees, as well as for the carpenters. The stockman testified

that he had been a refrigeration mechanic apprentice but had been doing the stockwork since a physical injury handicapped him.

The Employer testified that its 2-year apprentice system, which is recognized in the contract and characterized by a progressive percentage of the journeyman wage, starting at 60 percent, had in recent years been applied only to the refrigeration group because the other 2 groups had remained static. It is clear on the record that men in the refrigeration group have been employed either as apprentices or as experienced refrigeration men. One man in the plant group was employed with previous refrigeration experience. He has requested a transfer to the refrigeration group, which is higher paid apparently because these men are required to do the outside work. None of the refrigeration group is a licensed engineer. Except in an emergency they have nothing to do with the ammonia-refrigeration system handled by the plant engineers.

The Employer and the Intervenor urge the appropriateness of the contract unit, contending that the group requested by the Petitioner is not a true craft group suitable for severance from the existing unit. They contend that the refrigeration employees "interchange" with the plant and the bakery maintenance employees, but the record shows little in this regard except in connection with emergencies. Witnesses for the Petitioner admitted that the incidental repair of slicing machinery, for instance, did not constitute refrigeration work.

The Board has customarily found that refrigeration and air-conditioning employees do not constitute a skilled craft group suitable for severance.¹ Here we note that an apprentice system does exist for the Employer's maintenance employees in Baltimore and has in recent years been applied only to those classified as refrigeration mechanics. But apart from the issue of the craft characteristics of these refrigeration mechanics, who are either hired as fully experienced refrigeration employees or serve an apprenticeship, the Petitioner seeks too restrictive a unit, excluding as it does those of the plant mechanics who operate the ammonia-refrigeration system and plant air-conditioning system and necessarily have similar skills. At the hearing it evinced no interest in any other unit, on jurisdictional grounds apparently. We shall therefore grant the Intervenor's motion to dismiss the petition. See International Harvester Company, McCormick Works, 92 NLRB 1504, 1506; Westinghouse Electric Corporation, 101 NLRB 663.

[The Board dismissed the petition.]

¹United States Rubber Company, 96 NLRB 564; Ford Motor Company, Aircraft Engine Division, 96 NLRB 1076, 1079; Abbotts Dairies, Inc., 97 NLRB 1064, 1068