

SIDNEY J. RUBIN t/a KLASSON KNITWEAR COMPANY¹ *and*
EVELYN KERSHNER, Petitioner *and* INTERNATIONAL
LADIES GARMENT WORKERS UNION, LOCAL 111, AFL.
Case No. 4-RD-90. July 15, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Bernard Samoff, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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 [Members Houston, 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 Petitioner, an employee of the Employer, asserts that the Union is no longer a representative, as defined in Section 9 (a) of the Act, of the employees designated in the petition.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 8 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

On February 28, 1953, the Union and the Employer executed a 3-year collective-bargaining contract, which contains a union-security clause. The Union contends that the contract is a bar to the proceeding. The Employer takes no position with respect to the contract-bar issue. The Petitioner makes no specific allegations as to the legality of the substantive provisions of the contract, but contends that an election should be directed because the employees did not ratify the contract. There is no evidence to indicate that employee ratification is a requirement for effective execution of the contract. In these circumstances, we assume, in accord with established Board policy, that all essential requirements were met to render the contract binding upon the parties.³ We, therefore, find no merit in the Petitioner's contention.

At the hearing, the hearing officer raised the question as to the application of the union-security clause and therefore permitted testimony to explain its application. The union-security clause reads as follows:

¹ The Employer's name appears as amended at the hearing.

² The hearing officer referred to the Board three motions of the Union to dismiss the proceeding. As we are dismissing the petition for reasons set forth in paragraph numbered 3, *infra*, we find it unnecessary to rule on these motions.

³ Avco Manufacturing Corporation, 97 NLRB 645

ARTICLE III: UNION MEMBERSHIP

Upon compliance with the requirements of Section 8 (a) (3) (i) of the Labor Management Relations Act, 1947, as amended, or upon a change in the law eliminating such requirements, good standing membership in the Union shall be a condition of employment for all employees* on and after the thirtieth day following the beginning of such employment but not before completion of the worker's trial period. (* who are included in the bargaining unit).

This provision could be interpreted to mean that employees who had been hired before the date of the contract were subject to discharge forthwith for nonmembership in the Union. However, we do not believe that the wording of the provision makes such interpretation logically imperative, for it could as well be argued that the time limitation of the clause is applicable to new employees only. Because we, like the hearing officer, believe the union-security clause is ambiguous, we shall examine the testimony of the parties so as to determine the meaning of the clause, as well as the practice under it.⁴

The union representative who negotiated the contract testified that the union-security clause was not intended to apply to employees employed before the date of the contract. The Employer testified that he was under the impression that such employees were permitted 30 days in which to join the Union. In any event, no attempt has been made to enforce the union-security clause. On these facts, we conclude that the contract did not deprive employees employed before the contract date of the 30-day grace period required by Section 8 (a) (3) of the Act. We, therefore, find that the union-security clause is not unlawful.

In view of the foregoing and upon the entire record in this case, we find that the contract is a bar to an election at this time. We shall, therefore, dismiss the petition.

[The Board dismissed the petition.]

⁴Bath Iron Works Corporation, 101 NLRB 181.

DESILU PRODUCTIONS, INC.¹ *and* TELEVISION WRITERS OF AMERICA, Petitioner. Case No. 21-RC-2847. July 15, 1953

DECISION AND ORDER

Upon consolidated petitions² duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held com-

¹Name appears as amended at the hearing.

²This case was consolidated at the first hearing with Cases Nos. 21-RC-2782, 21-RC-2791, 21-RC-2872, and 21-RC-2849 reported as National Broadcasting Company, Inc., et al., 104 NLRB 587.