

YOUNG MOTORS, INC. and LOCAL 259, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, Petitioner. Case No. 2-RC-5723. October 21, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Aaron Weissman, hearing officer.¹ The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

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:

Local 917, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Intervenor, contends that its contract with the Employer extends to May 25, 1954, and is a bar to this proceeding. The Petitioner asserts that the contract is not a bar because its terminal date is 1953 instead of 1954, and it further questions the legality of the union-security provisions therein.

As to the expiration date of the contract in question, the record clearly shows that the Employer and Intervenor negotiated and executed a 2-year contract effective from May 25, 1952, to May 25, 1954. While a 1-year contract was initially considered by the parties, there is no evidence that such contract was signed.² We find that the agreement signed by the contracting parties extends to 1954.

As to the union-security provisions, the contract provides:

1. Except as provided in Section 2 (b) and subject to the provisions of the Labor Management Relations Act of 1947, the Employer shall employ in any and all shops or barns now or hereafter owned or operated by it, in greater New York City, only such maintenance employees including auto mechanics and helpers, as are members of the Union with paid up Union dues books.

¹ The original hearing in this case was conducted on May 6 and 13, 1953. Upon remand by the Board on July 10, 1953, for additional evidence pertaining to the contract-bar issue, a further hearing was held on July 22, 1953.

² The additional facts relied upon by the Petitioner that bargaining history at these operations had been on the basis of yearly contracts and that the employees involved believed the current contract to be for a 1-year period expiring May 25, 1953, are without controlling effect.

2. (a) All maintenance employees now employed who shall be declared by the Union to be its members with paid up Union dues books, are hereby declared to be regular employees of the Employer, subject to the terms and conditions of this Agreement.

(b) New employees hired by the Employer shall serve a trial period of thirty (30) days. If employed after said trial period they shall be deemed regular employees of the Employer. Such new employees shall then make application to the Union for membership.

These provisions, considered alone, appear to exceed the limits of union security permitted by the proviso to Section 8 (a) (3) of the Act, because they do not explicitly provide the 30-day statutory period in which to join the Intervenor to employees who were not members of the Intervenor when this contract was executed. However, at the reopened hearing, the parties stipulated that, with the exception of employee Custis Wells, all employees in the contractual unit who were on the payroll on May 25, 1952, the effective date of the contract, were members of the Intervenor.³ With respect to Wells, he was first employed during the week ending February 29, 1952. At the time he was hired, Wells was a paid-up member of Local 272, a sister local of the Intervenor. During March 1952, he was informed of the 30-day trial period provided for in the contract then in effect,⁴ was told that he was entitled to a transfer free of charge under the bylaws of the Intervenor's International Union, and was requested to get a transfer card. Before May 25, 1952, Wells asked the Intervenor's representative to secure the transfer of membership for him and the Intervenor's representative obtained the oral approval of the sister local. Although formal transfer of membership was not effected until June 12, 1952, we are of the opinion that Wells was in substance a member of the Intervenor on the effective date of the existing contract.

Thus, we are satisfied that all employees in the unit were members of the Intervenor when the current contract was executed. Necessarily, therefore, the situation here falls within the scope of the Board's recent holding in Regal Shoe Company, 106 NLRB 1078, to the effect that in representation cases the Board will not examine current contracts with the same judicial preciseness as may be required in other proceedings. Accordingly, we find that the union-security provisions in the Intervenor's contract do not prevent the agreement from operating as a bar and we shall therefore dismiss the petition on the contract-bar basis.

[The Board dismissed the petition.]

³ Eddie Sachs, an errand boy on the payroll as of May 25, 1952, was not a member of the Union. However, his classification was not covered by the contract unit nor is he included in the unit sought by the Petitioner herein. Under these circumstances, we find that his non-membership in the Intervenor is without operative significance.

⁴ The contract in effect at that time contained union-security provisions similar to those in the current contract.

Member Murdock, concurring:

I agree with my colleagues that the Intervenor's contract is a bar and that the petition should therefore be dismissed. I find that the contract's union-security clause is not unlawful because all employees in the unit were members of the Intervenor when the contract was made, and therefore, under the Board's holding in Charles A. Krause Milling Company, 97 NLRB 536, it was unnecessary to refer in the agreement to a nonexistent category of employees. As I find that the contract contains a valid union-security clause and is therefore a bar, I concur in the decision of my colleagues to dismiss the petition in this case. However, I do not thereby necessarily concur in the pronouncement made by the Board in the recent Regal Shoe case, in which I did not participate, that in representation cases the Board should not examine contracts with the same judicial preciseness as may be required in other proceedings.

Member Rodgers took no part in the consideration of the above Decision and Order.

VULCAN STEEL TANK CORPORATION *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, LOCAL 592, AFL. Case No. 16-CA-432. October 22, 1953

DECISION AND ORDER

On June 18, 1953, the Board issued its Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order in the above-entitled proceeding, a copy of which is attached hereto. Thereafter, the Respondents filed exceptions and a supporting brief. In addition, the Respondent requested oral argument, contending, *inter alia*, that such oral argument is necessitated because of the transfer of the proceeding to the Board without analysis of the cases and evaluation of the testimony by the Trial Examiner. However, because the record and the Respondent's exceptions and supporting brief, in our opinion, adequately present the issues and positions of the parties and because proposed findings of fact, proposed conclusions of law, and a proposed order issued herein in lieu of a Trial Examiner's Intermediate Report, the Respondent's request is hereby denied.

The Board has considered the proposed findings of fact, proposed conclusions of law, and proposed order, the exceptions and brief filed by the Respondent, and the entire record in the case. The Respondent specifically excepted to the transfer of this case from the Trial Examiner to the Board rather than requiring a new hearing. As the Trial Examiner who heard the testimony in this proceeding was not available to