

Agreement settling the Detroit strike was not reached until June 24. On the following day, Frank went to Bellefontaine and made his announcement. The agreement ending the Detroit strike was formally signed on June 26.

In the light of all these circumstances, we find that the Employer was following a normal business course in having Frank announce the benefits at Bellefontaine immediately after agreement was reached in Detroit. We do not believe that it was under any obligation to depart from such a course by deferring the announcement until after the election, because of the fortuitous circumstance that on the very day agreement was reached in Detroit the Employer learned that the Board had directed an election within 30 days at Bellefontaine. Accordingly, we reject the hearing officer's recommendation that the election be set aside and we hereby overrule the Petitioner's objections.

As we have overruled the objections to the election, and as the tally of ballots shows that the Petitioner lost the election, we shall issue a certification of results of election to that effect.

[The Board certified that a majority of the valid ballots was not cast for International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that the said labor organization is not the exclusive representative of the production and maintenance employees at the Employer's Bellefontaine, Ohio, plant.]

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A. O. SMITH CORPORATION *and* LOCAL 167, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL, Petitioner. Case No. 13-RC-3570. March 1, 1954

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Virginia M. McElroy, hearing officer. The hearing officer's rulings made at the hearing 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 certain 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:

The Employer and the Intervenor, Technical Engineers Association, contend that their current contract<sup>1</sup> is a bar to the instant proceeding. The contract was negotiated and executed by the Intervenor and was subsequently ratified by its local organization--Technical Unit, A. O. Smith Corporation, Kankakee Works--herein called Technical Unit.<sup>2</sup> The Petitioner contends that the contract is not a bar on the alternative grounds that (1) the Technical Unit is defunct or (2) a schism has occurred in the ranks of the Intervenor and the Technical Unit.

The Intervenor formerly was affiliated with the American Federation of Labor, herein called the AFL. Because of certain conflicts between officers of the Intervenor and the AFL, the Intervenor disaffiliated from the AFL in May 1951 and was organized as an independent national union. The membership of the Technical Unit were opposed to the secession, desiring to remain affiliated. Early in 1953, the Technical Unit began to take active steps to secure reaffiliation with the AFL.<sup>3</sup>

On August 27, 1953, notices were duly circulated among the members of the Technical Unit, informing them of a special meeting to be held the next day where a "motion for disaffiliation [from the Intervenor would] be entertained" and also informing them of another special meeting to be held on September 2, 1953, in order to entertain a motion for new affiliation.

At the August 28 meeting, attended only by members, the 30 persons present voted unanimously to disaffiliate from the Intervenor. The second special meeting of September 2, 1953, was also attended by 30 members who voted unanimously to affiliate with AFTE. Regular meetings of the Technical Unit are held monthly and attended by 25 to 30 members; this constitutes a quorum under the Technical Unit's bylaws. At the second meeting, the members also adopted new bylaws and elected the officers of the Technical Unit to be officers of the new organization to be formed. On September 4, 1953, 66 of the approximately 70 members of the Technical Unit approved in writing the actions taken at the 2 special meetings.

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<sup>1</sup> The contract was executed April 8, 1953, and runs from January 26, 1953, to January 25, 1955. It covers the employees here sought. The contract unit is composed of two units of employees for which the Intervenor was certified in 1950 and 1952, respectively.

<sup>2</sup> Under the terms of the Intervenor's constitution and bylaws, the employees are members of the Intervenor as well as being organized in a local unit.

<sup>3</sup> About April 1953 representatives of the Technical Unit contacted a representative of American Federation of Technical Engineers, AFL, herein called AFTE, and requested information as to means of affiliating with that organization. The AFTE representative informed them, however, that he could not assist them until they had disaffiliated from the Intervenor.

About September 2, 1953, the new organization received a charter from the AFTE and was assigned the local number of 167, the Petitioner herein. The bank account of the Technical Unit has been redeposited in the Petitioner's name and the books and records of the former organization have been acquired by the Petitioner.

On September 3, 1953, the Intervenor was informed that the Technical Unit had voted to disaffiliate from it. In turn, the Intervenor, on September 15, removed the officers of the Technical Unit from their positions. Since September 3, the Intervenor has held about 3 meetings of the Technical Unit, which were conducted by a representative of the Intervenor.<sup>4</sup> While 3 or 4 members of the Technical Unit attended 1 meeting, none attended the other 2 meetings. Since September 3, the president of the Intervenor, pursuant to the terms of the contract, has processed a grievance with the Employer. While the president of the new local has attended several grievance meetings since September 3, the Employer has refused to deal with him as the representative of the new local. Both the Intervenor and the Petitioner have notified the Employer that they desire to renegotiate wages pursuant to the terms of the contract.<sup>5</sup> The Employer is holding in escrow dues deducted under the contract.

On September 3, 1953, the Petitioner requested the Employer to bargain with it concerning a new contract. The Employer refused to do so because of its existing contract with the Intervenor.

The Intervenor is the certified bargaining representative of the employees covered by the contract, which it negotiated and executed. We find that the Intervenor is still a functioning organization--ready, willing, and able to administer the contract, and is still recognized by the Employer as the active representative of the employees. Under these circumstances, we do not find any confusion as to the identity of the bargaining agent. In view of the foregoing, we find that the contract is a bar to the instant proceeding.<sup>6</sup> Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

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

<sup>4</sup>Previously, the meetings of the Technical Unit had been conducted by its own officers.

<sup>5</sup>The Petitioner has indicated that it is willing to abide by the terms of the current contract.

<sup>6</sup>The Budd Company, 107 NLRB 116; Central Rufina, 105 NLRB 591.