

WORTHINGTON CORPORATION (HOLYOKE WORKS) *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, CIO, PETITIONER. *Case No. 1-RC-3597. September 13, 1954*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Torbert H. Macdonald, 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. The Employer raised as a bar to this proceeding its existing contract with the Intervenor herein, Local 259, United Electrical, Radio & Machine Workers of America, U. E. The Intervenor took no position on the contract-bar issue but indicated at the hearing that it was willing to enter into a consent election, as proposed by the Petitioner. The Petitioner contends that the contract upon which the Employer relies was a premature extension of a prior agreement and therefore cannot serve as a bar.

The Intervenor has represented the Employer's employees in the unit herein involved since 1940, and was certified as bargaining representative of these employees in June 1950 following a consent election (1-RC-1525). Prior to their current agreement, the Employer and the Intervenor had an agreement which provided that it should be effective from October 23, 1952, to June 1, 1954. It provided further that either party might notify the other on or about 60 days prior to June 1, 1954, of a desire to meet for the purpose of making changes in this agreement, and that such a meeting would be held not less than 30 nor more than 60 days prior to June 1, 1954. The agreement also contained a provision permitting reopening as to wage rates on April 1, 1953, pursuant to which the parties executed a supplemental agreement on June 5, 1953, increasing the wage rates.

The Employer is engaged in the manufacture of pumps, compressors, air-conditioning equipment, and other products. At the time of the hearing, on April 20, 1954, it employed more than 1,000 employees, of whom 732 were in the unit herein involved. Because of increased air-conditioning business, the Employer purchased property in Decatur, Alabama, about a year ago, and has built a plant there for the manufacture of air-conditioning equipment. As the Decatur plant was more advantageously situated with respect to sources of raw ma-

terials and to potential customers, the Employer planned gradually to move certain of its Holyoke operations to Decatur and on this basis, it ordered new equipment for the manufacture of compressors at the Decatur plant, and intended not to replace the outmoded machines in the Holyoke plant. It was believed that this might lead eventually to abandoning the Holyoke plant.

The Employer, as was its practice, informed the Intervenor of these plans. After several discussions in September 1953, it was agreed that the Employer would install the new machinery in the Holyoke plant and continue to operate that plant, in return for which the Intervenor would agree to certain lower wage rates and other related changes in the prevailing agreement. The parties also agreed that the effective date of their agreement would have to be extended because installation of the new machinery would not be completed until about May 1954, and the Employer wanted some assurance of stability. They agreed further that the terminal date of their agreement should be changed from June to September because June fell during the height of the season in the air-conditioning industry, and it was more practical to negotiate agreements at the completion of the busy season. Accordingly, a new agreement was entered into on September 28, 1953, to be effective by its terms until September 1, 1955. It is this contract which the Employer raises as a bar but which the Petitioner contends is a premature extension of the prior agreement and cannot therefore bar its petition, which was filed on March 31, 1954.

We find merit in the Petitioner's contention. The purpose of the premature-extension rule, which the Board has recently reaffirmed,¹ is to enable employees to change their bargaining agent, if they so desire, at reasonable and clearly predictable intervals. This rule in no way impedes the execution by an employer and union of a new agreement for valid economic reasons during the term of an existing contract.

Accordingly, as the current contract in this case is a premature extension of the prior agreement and as the petition was timely filed with respect to the latter agreement, we find that no bar exists to a present election.

We therefore 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. Substantially in accord with the agreement of the parties, we find that all hourly paid employees at the Employer's Holyoke, Massa-

¹ *American Steel & Wire Division of United States Steel Corporation*, 109 NLRB 373. Although Chairman Farmer dissented from the majority opinion in that case, he nevertheless now considers himself bound by that decision.

Cf. *Sefton Fibre Can Company*, 109 NLRB 360, in which the Board, under facts distinguishable from those in the present case, permitted an exception to the premature extension rule.

chusetts, Works, excluding executives, office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.²

[Text of Direction of Election omitted from publication.]

MEMBERS MURDOCK and PETERSON took no part in the consideration of the above Decision and Direction of Election.

² This unit is essentially the same as that covered by the contracts between the Employer and Intervenor.

DAVID MAX AND COMPANY, PETITIONER *and* INDEPENDENT UNION OF AUTOMATIC GLASS FABRICATION WORKERS *and* LOCAL UNION No. 963 OF BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL

DAVID MAX AND COMPANY *and* INDEPENDENT UNION OF AUTOMATIC GLASS FABRICATION WORKERS, PETITIONER. *Cases Nos. 5-RM-258 and 5-RC-1464. September 13, 1954*

Decision and Direction of Election

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing on the consolidated cases was held before Louis S. Wallerstein, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Local Union No. 963 contends that the RC petition should be dismissed because the Petitioner, herein called the Independent, was illegally assisted by the Employer, and is therefore not a bona fide labor organization, and that the RM petition should be dismissed because the Employer illegally assisted the Independent. We find these contentions to be without merit. In substance, they allege that the Employer has violated Section 8 (a) (2) of the Act, and the Board will not, in a representation proceeding, determine whether the Employer has so violated the Act.² Moreover, the evidence relied upon by Local Union No. 963 in the instant connection is intended to prove the same basic factual allegation of the 8 (a) (2) charge brought by Local Union No. 963 against the Employer in Case No. 5-CA-827, wherein the Regional Director refused to issue a complaint and, on appeal, was sustained in his action by the General Counsel. Under established Board

¹ At the hearing Local Union No. 963 of Brotherhood of Painters, Decorators and Paperhangers of America, AFL, herein called Local Union No. 963, intervened in the RC proceeding, without objection.

² *The Coleman Company, Inc.*, 101 NLRB 120; *Marine Optical Manufacturing Co.*, 92 NLRB 571.