

office on June 18, 1952, were not timely filed. Accordingly, we shall dismiss the Employer's objections and his exceptions. As the Petitioner has secured a majority of the votes cast, we shall certify it as the bargaining representative of the employees in the appropriate unit.

### Certification of Representatives

It is hereby certified that Lodge 1317, International Association of Machinists, AFL, has been designated and selected by a majority of the employees in the unit found appropriate in the Decision and Direction of Election herein, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

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<sup>1</sup> 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 [Chairman Herzog and Members Murdock and Peterson].

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WIEDEMANN MACHINE COMPANY, PETITIONER *and* LOCAL 123, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO *and* MACHINE TOOL AND DIE LOCAL 155, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).<sup>1</sup> *Case No. 4-RM-112. August 27, 1952*

### Decision and Direction of Election

Upon a petition duly filed, a hearing was held before Harold X. Summers, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

Pusuant 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].

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<sup>1</sup> The Unions are herein respectively called the IUE and the UE.

<sup>2</sup> The hearing officer's rejection of the several offers of proof made at the hearing by the UE is affirmed for the reasons stated, *infra*. We also affirm the hearing officer's ruling, contrary to the UE's contention, that the IUE was not required to make a showing of interest in order to participate in this proceeding. Labor organizations named in employer petitions need not make a showing of interest to be entitled to participate in proceedings instituted by the filing of such petitions. *P. R. Mallory & Co., Inc.*, 89 NLRB 962.

Upon the entire record<sup>3</sup> in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Unions are labor organizations claiming to represent employees of the Employer.

3. The UE, following its certification in 1946, has since bargained with the Employer for its production and maintenance employees. The expiration date of the last written contract between the parties, dated May 31, 1950, was extended by a supplemental agreement to May 15, 1952. The contract also provided for its yearly automatic renewal unless a notice was given by either party to the other 60 days before the expiration date terminating the contract or proposing changes therein. Pursuant to this latter provision the UE served a timely notice on the Employer proposing changes in the contract which effectively forestalled its automatic renewal on May 15, 1952. Thereupon the parties held several meetings to negotiate the proposed changes and, after terms were agreed upon by the negotiators, a memorandum embodying these changes was prepared and delivered to the Employer's president for approval. To date, this memorandum has not been signed by the Employer. On June 3, 1952, the IUE notified the Employer that it represented its production and maintenance employees and demanded that the Employer bargain with it for these employees. At the same time the UE insisted upon continued recognition as the representative of these employees. Because of these conflicting claims the Employer filed the instant petition on June 6, 1952.

The UE contends that the above-described negotiations resulted in a binding contract between the UE and the Employer which, though not signed, should bar this proceeding. We find no merit in this contention. The record shows clearly that the contract which expired on May 15, 1952, was not renewed and was not superseded by a new written signed contract. In the absence of a signed contract there is no basis for the application of the Board's contract bar rule, even

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<sup>3</sup> After the hearing had been closed the Regional Director for the Fourth Region filed a motion and an amended motion to correct errors in the transcript of testimony. No objection to these motions was made by the IUE. The UE, however, does object and moves for a rehearing on the ground that the transcript as presently constituted is unintelligible and the record is therefore inadequate. The UE opposes the numerous changes proposed by the Regional Director's motions because they are based on the hearing officer's notes and memory which assertedly are "not infallible." We are satisfied that the proposed changes seek merely to improve the rhetorical structure of the testimony to make it more readable, or to correct testimony obviously not reported as given but whose correct meaning may be derived from the testimony as a whole. Nevertheless, as the UE objects to these changes, and because the record as presently constituted sufficiently enables us to consider the relevant issues and facts in this case, as well as the positions of the parties, we shall deny the motions to correct the transcript of testimony. We also deny the UE's motion for a rehearing.

assuming the existence of an oral or unsigned agreement which may be enforceable at law.<sup>4</sup> The UE's motion to dismiss the petition on the ground of contract bar is therefore denied.

We find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.<sup>5</sup>

4. We find, in accordance with the agreement of the parties, that all production and maintenance employees at the Employer's Philadelphia, Pennsylvania, plant including expeditors, stockroom employees, truck drivers, and apprentices, but excluding office clerical employees, draftsmen, foremen, and all other 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.

[Text of Direction of Election omitted from publication in this volume.]

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<sup>4</sup> *Groveton Papers Company, Inc.*, 96 NLRB 1369. We find no merit in the UE's contention that Section 8 (d) of the Act, which provides in part that to bargain collectively is (among other things) "the execution of a written contract incorporating any agreement reached if requested by either party," compels the Board to discard the requirement that only a written signed contract may operate as a bar. The hearing officer properly rejected as immaterial the UE's offers of proof to show the existence of an enforceable agreement through evidence that the Employer has put into effect the terms reached by the negotiators and is checking off dues for the UE. The UE also contended that the Board's contract bar rule should not apply in this case because the Employer's signing of a new contract was "frustrated" by the transfer of allegiance of the UE's negotiators to the IUE. Such explanation for the Employer's failure to sign a contract asserted as a bar is immaterial to the issue before us. The hearing officer therefore properly rejected the UE's offer to prove the defection of its negotiators.

<sup>5</sup> The UE's motion to dismiss the petition on the ground that a question affecting commerce within the meaning of the Act does not exist is denied.

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FEDERAL YEAST CORPORATION *and* INTERNATIONAL UNION OF UNITED  
BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS,  
CIO, PETITIONER. *Case No. 5-RC-1111. August 27, 1952*

### Decision and Direction of Elections

Upon a petition duly filed, a hearing was held before Henry L. Segal, hearing officer. 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 [Chairman Herzog and Members 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 National Labor Relations Act.