

Upon the basis of the foregoing findings of fact and upon the entire record, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. The operations of the Respondent, Coca-Cola Bottling Company of San Angelo, Texas, occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.
2. General Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 583, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
3. The Respondent, Coca-Cola Bottling Company of San Angelo, Texas, has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication.]

AMERICAN CAST PRODUCTS, INC. *and* AKRON ASSOCIATION OF THE PAT-
TERN MAKERS LEAGUE, PATTERN MAKERS LEAGUE OF NORTH AMERICA,
AFL, PETITIONER. *Case No. 8-RC-2262. November 2, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before W. R. Griesbach, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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:

The Petitioner seeks an election in a unit composed of the Employer's patternmakers and patternmaker apprentices. The Employer and the Intervenor contend that an existing collective-bargaining contract covers the employees sought by the Petitioner, and is a bar to a present determination of representatives. On June 1, 1953, the Employer and the Intervenor executed a contract for a term of 1 year, which recognized the Intervenor as the exclusive bargaining agent for all of the Employer's employees, excluding supervisors and technical and office

¹ At the hearing, the petition and other formal papers were amended to show the correct name of the Employer and the Petitioner.

² The hearing officer referred to the Board the motions of the Employer and International Molders and Foundry Workers Union of North America, Local 440, AFL, herein called the Intervenor, to dismiss the petition on the ground that a current contract between them constitutes a bar to this proceeding. For the reasons given *infra*, these motions are hereby granted.

employees.³ The contract provided for automatic renewal in the absence of written notification of a desire to modify or terminate the contract, not less than 60 days prior to the renewal date. It was stipulated at the hearing that the contract was automatically renewed in accordance with its renewal provisions, and continues in effect until June 1, 1955. The Petitioner asserts that this contract cannot constitute a bar to an election in a unit of patternmakers because (1) the Employer had no patternmakers working at the plant at the time the contract was executed; (2) the parties to the contract did not enforce the union-security provisions of the contract against the Employer's patternmakers; and (3) the Petitioner referred patternmakers to the Employer, and had contract discussions with the Employer relative to patternmakers beginning in February 1954, and on May 27, 1954, entered into an oral agreement on everything except wages.

Prior to the execution of the contract between the Employer and the Intervenor on June 1, 1953, the Employer purchased all of its patterns from a partnership. Sometime between June 1 and June 8, 1953, the Employer purchased the partnership's business with its building and equipment, and on June 8 hired a salaried employee who was to work as a supervisor in the Employer's new pattern shop. On August 3, 1953, the Employer and the Intervenor entered into a supplemental agreement which provided for the addition to the contract's classification schedule of the job classifications of journeymen patternmakers and patternmaker supervisor. In October 1953, the Employer hired its first hourly paid patternmaker.

When the patternmakers were hired by the Employer, they were informed that the Employer had a union-security provision in its contract with the Intervenor, and that they would be bound by all of the provisions of the contract, except that the Intervenor had agreed to waive dues payments because these employees were already paying dues to the Petitioner, another affiliate of the American Federation of Labor.⁴ The patternmakers receive the same benefits under the contract as do the other employees in the unit, and are subject to the same conditions of employment under the contract, with the exception of the payment of dues.

It is clear from the language of the contract of June 1, 1953, and the supplemental agreement of August 3, 1953, that the parties to the contract intended to add the patternmakers to the bargaining unit covered by the contract. We do not believe the fact that the Inter-

³ In May 1953, the Intervenor was certified by the Board as the collective-bargaining representative for the Employer's production and maintenance employees, after winning a Board-conducted election.

⁴ The contract between the Employer and the Intervenor contains a union-security provision providing that all new employees shall become members of the Intervenor 30 working days after being employed, and shall remain members of the Intervenor in good standing as a continuing condition of employment.

venor agreed to waive payment of dues is significant under the facts in this case. There is nothing in the Act which prevents a labor organization, within its discretion, from waiving the payment of dues. The record clearly shows that the Employer and the Intervenor considered these employees to be within the bargaining unit covered by the contract, and that the contract was in all other respects applied to them.

The record does not support the Petitioner's assertion that it had an oral agreement with the Employer covering the patternmakers. Moreover, such an agreement, even if made, could not impair the validity of the existing contract between the Employer and the Intervenor for contract-bar purposes. The fact that the Employer secured some of its patternmakers through the Petitioner rather than through newspaper ads, does not militate against a finding that the patternmakers were included within the terms of the contract between the Employer and the Intervenor.

On the basis of the entire record, we find that the Petitioner's contentions are without merit, and that the contract of June 1, 1953, together with the August 3, 1953, supplemental agreement, covers the Employer's patternmakers.⁵ As the petition in this case was filed after the automatic renewal date of the contract, we find that the contract is a bar to a present determination of representatives.⁶ We shall, therefore, dismiss the petition filed in this case.

[The Board dismissed the petition.]

CHAIRMAN FARMER and MEMBER RODGERS, dissenting:

We dissent from the decision of our colleagues not to direct an election among the employees of the Employer's pattern shop. First of all, at the time of entering into the contract which the majority decision here has found to be a bar, the Employer had no pattern shop and purchased all the patterns used in its foundry operations from an independently owned and operated pattern shop across the railway from the Employer's main plant. Thereafter the Employer purchased the patternmaking operation, including the building and equipment, and added it to its own operation which consisted of the making of gray iron castings. The foundry plant has been engaged in a job-shop type of operation, and the Employer has since operated the pattern shop in essentially the same manner, producing the patterns needed

⁵ Cf. *Radio Corporation of America, RCA Victor Division*, 107 NLRB 993. The instant case is distinguishable from those cases in which the Board found that where the classification sought to be represented in a separate unit was neither in existence nor within the contemplation of the parties at the time of the execution of the contract, and the parties did nothing to include them within the coverage of the contract, the contract covering the production and maintenance employees did not constitute a bar to an election in a unit composed of employees in the new classification. See *International Harvester Company, Melrose Park Works*, 94 NLRB 907, 908.

⁶ *Billboard Publishing Company*, 108 NLRB 182.

in the foundry operations and also making and repairing patterns for the Employer's customers.

Although, after the purchase of the pattern shop the Employer and Intervenor added certain patternmaking classifications to their contract, when patternmakers later were actually hired, the parties recognized their membership in the Petitioner by waiving application of the contract's union-security provisions as to them.

It is not, of course, the Board's policy to conduct a separate election among employees who, though employed in classifications added after the execution of an existing contract, are nevertheless merely "accretions" to an existing unit.⁷ However, where the Employer has added to its operations a new plant, or, as here, a new division which formerly was a separate enterprise, and no persuasive bargaining history has since developed, the Board will customarily grant an election to the employees of such division or plant to determine their desires as to representation.⁸ We believe that the latter is the proper course to pursue here, and we would hold the contract no bar and direct an election to determine their desires as to inclusion in the foundry unit.

⁷ *The Budd Company*, 107 NLRB 116.

⁸ *Columbia Broadcasting System, Inc.*, 108 NLRB 1468, and cases cited in footnote 6; *Michigan Limestone Division, United States Steel Corporation*, 106 NLRB 1391; *Armstrong Cork Company (Lancaster Floor Plant)*, 106 NLRB 1147.

MISSISSIPPI RIVER FUEL CORPORATION *and* UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, C. I. O., PETITIONER. *Case No. 14-RC-2523. November 2, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William F. Trent, 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 organization involved claims 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 Petitioner seeks to represent all the field operating employees in the Employer's city division. The Employer contends that only a systemwide unit is appropriate.