A. SANDLER CO. *and* JAMES A. MURPHY, PETITIONER *and* LOCAL 504, GENERAL WAREHOUSEMEN, SHIPPERS, PACKERS, RECEIVERS, STOCKMEN, CHAUFFEURS & HELPERS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL. *Case No. 1-RD-164. November 3, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before M. Alice Fountain, 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:

Local 504, General Warehousemen, Shippers, Packers, Receivers, Stockmen, Chauffeurs & Helpers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, herein called the Union, contends that an existing collective-bargaining contract is a bar to this decertification proceeding. The Petitioner contends that the contract is not a bar because it contains an unlawful union-security provision. The Employer is neutral.

Following certification by the Board in 1951, the Union and the Employer entered into a collective-bargaining agreement effective from May 1, 1951, to April 30, 1953. In 1953, the contracting parties amended their agreement and extended its term to April 30, 1955. The 1951 contract contains the following union-security clause:

> All employees who are members of the UNION shall remain members of the UNION as a condition of employment. *All employees who are not members of the UNION shall promptly become members of the UNION.* All persons newly hired for jobs covered by this agreement shall join the UNION on the 61st working day following the beginning of his such employment. [Emphasis supplied.]

The Petitioner asserts that because the contract provides that existing employees who are not members of the Union shall promptly become such members, the clause is unlawful and the agreement therefore should not be held a bar.

The Petitioner relies upon the fact that about 3 years ago, several of the employees may have been exposed for a limited 30-day period of time to the coercive effect of a contract which did not expressly grant them 30 days in which to join the Union as required by the proviso to Section 8 (a) (3). There is no indication that any of these employees were required to become a member of the Union during that period, or that there was any discrimination practiced against a single employee under the contract.

We are not in this case concerned with a charge of unfair labor practices involving the protection of employee rights. We are called upon only to determine whether or not an election is appropriate at this time. This is an entirely different problem which requires us to consider other and equally pertinent objectives of the statute, not the least of which is that of fostering stability and discouraging labor turmoil and unrest. Specifically, we must decide whether we will brush aside an existing contract between an employer and a bona fide union, under which the parties have achieved satisfactory and stable labor relations, and entertain a petition for a mid-contract election solely because of a technical omission in contract language, which, insofar as the record shows, has not resulted in harm to a single employee.

Our contract-bar principle was devised and has long been applied in election cases as a purely administrative rule having as its salutary purpose safeguarding and fostering stability of labor relations. A petitioner—seeking to disturb a peaceful and harmonious relationship under an existing contract which the employer and the contracting union are living under in good faith—should not be permitted to circumvent the operation of our contract-bar rule on the technical and legalistic ground urged by this Petitioner.[1] Accordingly, we find that, as the current contract between the Employer and the Union will not expire until 1955, it is a bar to the present petition. We shall therefore dismiss the petition.

[The Board dismissed the petition.]

MEMBER MURDOCK, concurring:

I concur in the result reached by the Chairman and Member Beeson in finding the Union's contract to be a bar to the petition. I do not adopt their reasoning to the extent that their opinion suggests that the Board should appraise the legality of a union-security clause differently in a representation proceeding on a contract-bar issue than in an unfair labor practice proceeding. Such an approach would be contrary to that taken by the Board since it first held a contract containing an illegal union-security clause should not be recognized as a bar.[2] The

[1] *Regal Shoe Company*, 106 NLRB 1078.
[2] *Hager-Hinge*, 80 NLRB 163.

only consideration has been whether the clause is legal or illegal—not whether the issue arises in a representation or an unfair labor practice case.

I find this contract to be a bar because I view the union-security clause as not illegal despite the technical omission specifically to provide a 30-day period for old employees to join the union, following the Board's recent decision in the *Whyte* case [3] and the decision of the Court of Appeals for the Third Circuit in the *UE* case.[4] As the Board in the *Whyte* complaint case and the court pointed out, while this 30-day joining period must be read into every contract, the failure expressly to set out this temporary transitional period does not operate to invalidate the entire union-security clause; that collective-bargaining agreements should not be so strictly and technically construed. By the same token I do not believe that the provision that old employees who are nonmembers shall join "promptly" was intended or should be construed as imposing an obligation to join in less time than the 30 days provided by the statute.[5] In line with the decisions in the *Whyte* case and *UE* case, I find that this contract exhibits substantial compliance with the statute. As it will not expire until 1955 it is a bar to the present petition.

MEMBER RODGERS, dissenting:

I would direct an election in this case.

The contract between the Employer and the Union, which my colleagues find a bar to an election, contains the following unlawful union-security provision:

> All employees who are members of the UNION shall remain members of the UNION as a condition of employment. All employees who are not members of the UNION shall promptly become members of the UNION. All persons newly hired for jobs covered by this agreement shall join the UNION on the 61st working day following the beginning of his such employment.

This provision is manifestly unlawful on its face in that it does not allow the required 30-day statutory grace period to those employees who, on the effective day of the agreement, were not members of the Union.[6]

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[3] *Whyte Manufacturing Company, Inc.*, 109 NLRB 1125.

[4] *N. L. R. B.* v. *United Electrical, Radio and Machine Workers of America, Local 622 (UE)*, 203 F 2d 673.

[5] The Employer's brief states without challenge that all employees except probationers were in fact union members at the beginning of the new contract period. There is no indication that any of the latter were required to become members of the union within 30 days of its effective date.

[6] The first proviso to Section 8 (a) (3) of the Act permits an employer and a union only to agree "to require as a condition of employment membership [in the union] on or after the thirtieth day following the beginning of employment or the effective date of such agreement, whichever is the later. . . ."

In my recent dissenting opinion in the *Whyte* case,[7] I pointed out that the mere existence of a clause like the instant one serves as a potent instrument of coercion to individual employees, who are, after all, the primary beneficiaries of the Act. And I further pointed out that this Board undercuts the important congressional policy against the closed shop, by recognizing as valid union-security provisions which do not conform to the statutory standard. The reasons, that compelled my dissent in the *Whyte* case also compel me now to say that the Board should not give its approval to the clause in this case by finding a contract bar to exist.

The issue here does not turn, as my colleagues imply, on whether there has been a showing of actual discrimination against employees. Indeed, the record affirmatively shows that when the contract was signed, none of the Employer's employees was a union member.[8] Nor is the issue disposed of by saying, as my colleagues say, that we are not here concerned with a charge of unfair labor practices involving the protection of employee rights. As a practical matter, unfair labor practice charges are not likely to be filed unless an unlawful union-security clause is actually enforced by discharge or other penalty. Meanwhile, the restraint against employees embodied in this contract is allowed to continue. By the majority decision herein, unions and employers are encouraged to execute illegal union-security provisions, for they are assured that their unlawful action, though ground for a possible unfair labor practice case, will be otherwise overlooked and condoned. Neither the specific language of the statute nor the legal rights of the individual employee should be so lightly brushed aside.

MEMBER PETERSON took no part in the consideration of the above Decision and Order.

[7] *Whyte Manufacturing Co.*, 109 NLRB 1125.
[8] Cf. *Regal Shoe Company*, 106 NLRB 1078.

ANTLE CARROTS, INC. *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 78, CIO, PETITIONER. *Case No. 20–RC–2592. November 3, 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 LaFayette D. Mathews, Jr., 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: