

the TOA cancelling the latter's authority to represent it in collective-bargaining matters.

The Board has held that, despite earlier participation in group bargaining, if an employer at an appropriate time manifests an unequivocal intent to withdraw from multiemployer bargaining and to pursue an individual course in labor relations, only a single employer unit thereafter is appropriate.³ In the present case, each Employer has cancelled the TOA's authority to negotiate in its behalf and has expressed an unequivocal intention hereafter to bargain on an individual employer basis. In these circumstances, only separate employer units are appropriate.

We find that the following employees employed by each of the Employers at Forks and Port Angeles, Washington, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

All employees excluding office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

[The Board dismissed the petitions filed in Cases Nos. 19-RC-1527 and 19-RM-149.]

³ *The Milk and Ice Cream Dealers of the Greater Cincinnati, Ohio*, 94 NLRB 23

WESTINGHOUSE ELECTRIC CORPORATION, SMALL MOTOR DIVISION¹ and LIMA WESTINGHOUSE PROFESSIONAL COUNCIL, PETITIONER. *Case No. 8-RC-2332. February 2, 1955*

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 Phillip Fusco, 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.²
3. 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.

¹ The Employer's name appears as amended at the hearing.

² The Intervenor, Lima Westinghouse Salaried Employees Association (affiliated with the Federation of Westinghouse Independent Salaried Unions, herein called the Federation) intervened on the basis of its current contract.

The Intervenor raises a contract bar, in which contention it is joined by the Employer. More specifically, the Intervenor contends that if supplement X to its master agreement with the Employer is not a bar, then the master agreement itself is a bar by reason of its automatic renewal. The Petitioner opposes this contention.³

The latest master agreement between the Intervenor's Federation and the Employer, as amended, renewed and extended to June 30, 1954, includes within its scope the employees involved in this proceeding at the Employer's Lima, Ohio, plant.⁴ This contract provided, in pertinent part, as follows:

Section XVII, Modification:

5. [Neither party] will request consideration of *any proposed change or additions* to this Agreement . . . before April 1, 1954.

* * * * *

8. If the parties do not reach agreement prior to July 1, 1954, with respect to any requested . . . changes . . . submitted *prior to May 1, 1954*, . . . the Federation may strike after the beginning of the next . . . contract year. . . . Such strike shall not be a violation of [the contract], but either party may, upon not less than one (1) day's written notice given to the other during such strike, . . . terminate [the contract]. [Emphasis supplied.]

Section XVIII, Termination:

1. [The contract is extended to June 30, 1954], and shall continue . . . in effect from year to year thereafter . . . , provided that either party may terminate . . . by giving the other party written notice of such termination at least sixty (60) days before [any] termination date.

On March 30, 1954, the Federation notified the Employer that it desired to reopen the contract, in keeping with section XVII, modification, and submitted extensive proposals for changes and additions thereto. Negotiations pursuant to the reopening resulted in supplement X, which was signed September 13, 1954, and incorporated the agreed changes in their contract, including its term, which was extended to October 15, 1955. Supplement X also contained the following provision as to ratification:

This supplement is signed by the Federation *subject to subsequent ratification* by the Executive Council of the Federation and the Affiliates involved, and *shall become null and void* if written notice of such ratification is not received by the Company from the Federation on or before September 27, 1954.

³ In view of our disposition of the contract-bar issues raised by the Intervenor, we need not consider the Petitioner's other contention in opposition thereto.

⁴ No issue is raised by the parties, or is apparent from the record, as to the coextensiveness of the scope of the unit sought with that covered by contracts between the Employer and the Intervenor.

Signed September 13, 1954, effective September 13, 1954.
[Emphasis supplied.]

The Petitioner requested recognition from the Employer on September 14, 1954, and 3 days later filed the instant petition. Written notice of the required ratification of supplement X was received by the Employer from the Federation on September 27, 1954.

The Intervenor, in its brief, contends first that the contractual requirement of ratification in supplement X, above quoted, should be construed to mean that failure to give notice of ratification is a *condition subsequent* terminating a prior existing contract, and that, inasmuch as supplement X was signed and made effective on September 13, before the Petitioner requested recognition and filed its petition, it operates as a bar. The Petitioner disputes this contention, urging that ratification, under the contract, was a *condition precedent* to its validity.

The ratification provision in the instant contract contains language which might warrant a finding either that the ratification was a condition precedent to the validity of the contract,⁵ or that failure to effect such ratification was a subsequent invalidating condition.⁶ However, whether it be construed as a condition precedent or condition subsequent to a valid contractual relationship, a provision requiring ratification of a collective-bargaining agreement for a stated term must, in our opinion, be satisfied before such contract may operate to bar a rival petition. The Board has recognized that stabilization of the bargaining relationship is a necessary element in the application of the contract-bar doctrine.⁷ Accordingly, failure to effect ratification where it is contemplated as the final step in the bargaining process, prevents the contract from operating as a bar for the reason that until ratification occurs, the relationship between the contracting parties cannot be deemed stabilized.⁸ We therefore find that, as the instant petition was filed before ratification of supplement X had occurred and notice thereof was received by the Employer, the supplement is not a bar to this proceeding.

The Intervenor contends that, in any case, its master agreement is a bar, upon the ground that, despite the reopening of negotiations under the modification clause of the contract, no notice to terminate was

⁵ This conclusion is supported by that part of the provision which makes the supplement "*subject to subsequent ratification. . .*" For the construction of contracts containing similar language, see *Radio Corporation of America, Victor Division*, 89 NLRB 699; *Merck & Co, Inc.*, 102 NLRB 1612, 1614

⁶ This conclusion is supported by that part of the provision which states that the supplement "*shall become null and void* if written notice of such ratification is not received. . ."

⁷ See *General Electric Company*, 108 NLRB 1290; *General Electric Company, Distribution Transformer Department*, 110 NLRB 992; *Bridgeport Brass Company Aluminum Division*, 110 NLRB 997

⁸ *General Electric Company, Distribution Transformer Department, supra.*

given under the termination clause, and that, by reason thereof, the contract was automatically renewed for 1 year on June 30, 1954. In support of this position, the Intervenor points to paragraph 8 of section XVII, detailed above, which provides termination arrangements after June 30, 1954, in the event of a strike. On this basis, the Intervenor argues that the recent decision in *American Lawn Mower Co.*⁹ is distinguishable. However, we see no essential difference between the situations in this case and in the *American Lawn Mower* decision.¹⁰ There, the wording of the modification and termination clauses was closely parallel. Here, although the language of the two clauses is not parallel, the separate modification clause is unlimited in scope, and the time for requesting changes thereunder is effectively cut off on May 1, 1954, which is the *Mill B* date¹¹ under the termination clause. Although paragraph 8 of section XVII may support the Intervenor's contention that the termination clause was intended to operate separately, it *also* shows, by limiting the Federation's right of strike to changes requested prior to May 1, 1954, that reopening under the modification clause was intended to produce the same result as a notice to terminate under the termination clause, to wit, a forestalling of the contract's automatic renewal for another term. The absence of notice to terminate under the termination clause, in our opinion, at best had merely the effect of continuing temporarily the old contract after its term expired until a new superseding contract could be executed.¹² We conclude that, because the modification and termination clauses herein are in effect coterminous, a notice under the modification clause necessarily implies an intent to suspend the contract, and is tantamount to a notice to terminate, forestalling any automatic renewal.¹³

Furthermore, assuming *arguendo* that the notice provisions are not actually coterminous, we hold that, for contract-bar purposes, a notice under either provision must be given the effect of a notice to terminate where it appears, as here, that the terms of the notice and the conduct of the parties indicate a desire to reopen the entire contract at a time normally appropriate for the giving of a notice to terminate.¹⁴ Under the circumstances, therefore, we find that the master agreement also is no bar to the present proceeding.¹⁵

⁹ 108 NLRB 1589

¹⁰ Also the cases cited therein in footnote 7, *supra*.

¹¹ See *Mill B, Inc.*, 40 NLRB 346.

¹² Such a temporary contract of indefinite duration following a fixed term does not bar a representation proceeding *New Jersey Porcelain Company*, 110 NLRB 790, *Iowa Public Service Company*, 102 NLRB 701, 702; *The Alliance Manufacturing Company*, 101 NLRB 112, 114. See also *Bridgeport Brass Company Aluminum Division*, *supra*. The case of *Rohm & Haas Company*, 108 NLRB 1285, relied upon by the Intervenor to support its position, has no application in the instant situation.

¹³ *American Lawn Mower Co.*, *supra*, and cases cited therein, *Sangamo Electric Company*, 110 NLRB 1.

¹⁴ See *Union Bag & Paper Corporation*, 110 NLRB 1631

¹⁵ For the reasons set forth in his dissenting opinions in *American Lawn Mower Co.*, *supra*, and *Union Bag & Paper Corporation*, *supra*, Member Murdock would find that the Intervenor's notice of March 30, 1954, which was expressly given pursuant to the master

4. The Petitioner seeks to sever a unit of professional employees from the salaried unit at the Employer's Lima plant, which the Intervenor has represented since 1941. The Employer and the Intervenor agree to the inclusion in the Petitioner's proposed unit, of the classifications which are detailed below, but they would add thereto the classification of tool engineer. The Petitioner contends that tool engineers are not professional employees and would exclude them.

The Employer's tool engineers are acquired through its graduate student training course and/or through roughly equivalent shop experience and self-education; they are engaged in analyzing drawings of complete assemblies and specifying in rough outline, for design engineers, the special tools which may be needed to make component parts; they work in the same general area with other employees in the proposed unit; and they spend about 25 percent of their time in consultation with admitted professional employees. Also, it does not appear that the addition of the tool engineers to the stipulated inclusions would destroy the predominantly professional character of that group. Under the circumstances, and in view of the community of interests they enjoy with employees whom the parties agree to include, we shall include the tool engineers in the stipulated professional group for whom an election is hereinafter directed. Upon the entire record, including the stipulation of the parties, we find that the employees in the proposed professional unit, including the tool engineers, may, if they so desire, constitute a separate appropriate unit of professional employees, despite their past inclusion in the salaried unit.¹⁶ On the other hand, they may continue to be represented as part of the existing unit.¹⁷

We shall direct an election among all professional employees employed at the Employer's Lima, Ohio, plant, including the following classifications of employees: tool engineer, nurse, junior engineer, industrial methods engineer (including time and motion analyst), plant equipment engineer, engineer associate, renewal parts and service engineer, design engineer, sales staff specialist, special equipment and development engineer, packing engineer, purchasing engineer, standard practices coordinator, material and process engineer, cost reduction engineer, product performance engineer, maintenance engineer, test and test equipment engineer, manufacturing material and process engineer, customer service specialist, manufacturing equipment design engineer, system engineer, negotiation engineer, sales engineer, technical publication analyst, aviation insulation and winding

contract's separate modification clause, did not prevent automatic renewal of the contract or remove it as a bar to the petition filed 4½ months after its *Mill B* date. However, as he considers himself bound by the majority decisions in the *American Lawn Mower* and *Union Bag* cases, Member Murdock joins in the decision to direct an election herein.

¹⁶ See *Westinghouse Electric Corporation*, 80 NLRB 591, footnote 11, at p. 595.

¹⁷ *Ibid.*

development technician, laboratory technician, insulation and winding technician, assistant buyer, and chemical and process engineer; but excluding all other employees, and all guards and supervisors as defined in the Act.

If a majority of these employees vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election is instructed to issue a certification of representatives to the Petitioner for such unit, which the Board in such circumstances finds to be a separate unit appropriate for purposes of collective bargaining.

If, on the other hand, a majority vote for the Intervenor, the Board finds the existing unit to be appropriate and the Regional Director will issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

PIONEER NATURAL GAS COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL, LOCAL UNION No. 351, PETITIONER.
Case No. 16-RC-1541. February 3, 1955

Decision and Order

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

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 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 a unit of certain transmission and distribution employees who reside and work in the Amarillo, Texas, area of the Employer's operations. The Employer opposes the unit sought on the ground that it is too limited in scope and contends that only a systemwide unit of all its transmission and distribution employees is appropriate.

The Employer, a Texas corporation, is a public utility engaged in the transmission, distribution, and sale of natural gas. It was formed

¹ The hearing officer referred to the Board, the Employer's motion to dismiss the petition. For the reasons stated, *infra*, this motion is granted.