

anomalous situation permissive under the majority's decision, that is, the representation of the clerical employees of this Employer in three different units.

MEMBER LEEDOM took no part in the consideration of the above Decision and Direction of Elections.

Western Electrochemical Company and International Association of Machinists, Local Lodge No. 845, AFL, Petitioner. Case No. 20-RC-2742. June 21, 1955

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before M. C. Dempster, 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 within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.¹

3. The Employer and the Council contend that a contract between them covering the employees in the proposed production and maintenance unit constitutes a bar to this proceeding.²

The collective-bargaining contract here relied on by the Employer and the Council was effective from September 1, 1953, to March 1, 1955, subject to automatic renewal for successive 12-month periods, unless either party gave written notice of a desire to change any of the contract provisions not less than 60 days before the contract's expiration date. The contract permitted each of the parties to open it once after midterm "to negotiate the subject of hourly wage rates only, on a cents per hour basis." In a letter dated December 22, 1953, the Council advised the Employer that it desired "to reopen for negotiation and adjustment, the subject of hourly wage rates only, on a cents per hour basis, for the period beginning March 1, 1954, and ending March 1, 1955." Council and Employer's representatives met at various times from January through September 1954. The parties did not

¹ The hearing officer permitted these labor organizations to intervene at the hearing: United Steelworkers of America, CIO (referred to as the Steelworkers); Boulder Canyon Project Metal Trades Council, AFL (referred to as the Council); International Chemical Workers Union, Local 218, AFL (referred to as the Chemical Workers); United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of North America & Canada, AFL, Local 525 (referred to as the Pipefitters); and International Brotherhood of Electrical Workers, AFL, Local 357 (referred to as the Electrical Workers).

² The Employer moved to dismiss the petition on contract bar grounds. We deny the motion for the reasons stated in the body of this Decision.

reach an agreement. Thereafter, in a letter to the Employer dated December 24, 1954, shortly before the operative date of the renewal clause, the Council requested that "negotiations on the labor agreement for the Western Electro Chemical Co., be continued at the earliest possible date." No meetings have been held pursuant to this request.

Since 1951 the Petitioner has signed the same collective-bargaining agreement with the Employer as the Council, but as a separate signatory representing a machinists unit. By letter dated December 29, 1953, to the Employer, it requested reopening of the wage provisions of the 1953 contract. It met thereafter with the Employer but did not conclude an agreement. In a letter dated December 28, 1954, it notified the Employer that it desired to negotiate a new agreement. It entered into a new agreement with the Employer effective March 1, 1955. That contract provides, *inter alia*, for an increase in wages, a 1957 termination date, and midterm reopening on hourly wage rates (including sick leave benefits).

After it entered into the new collective-bargaining contract with the Petitioner, the Employer proposed to the Council the same basic contract terms. After initial conferences with the Employer, the Council called the employees to two "special meetings" "to consider the results of wage negotiations." On March 14, 1955, the Council executed an agreement with the Employer accepting the Employer's proposals.³ The agreement between the Council and the Employer included a provision that the parties' September 1953 contract "has been automatically extended to March 1, 1956, by failure of either party to reopen the agreement. . . ." It contained a further provision extending the 1956 termination date to March 1, 1957.

The Petitioner filed its petition on February 10, 1955, seeking to represent the established contract production and maintenance unit. The Employer and the Council contend that their 1953 contract was automatically renewed by its terms on December 31, 1954, and therefore bars the petition. The Petitioner and the unions that have intervened argue principally that the Council, prior to its contract's latest automatic renewal date, in effect terminated the contract by its notice of December 24, 1954, to the Employer requesting negotiation of the entire agreement, and that therefore the contract is no bar.

The question here is whether the Council intended and the Employer understood the Council's December 24, 1954, letter requesting that "negotiations on the labor agreement . . . be continued" as referring to their contract's limited wage-reopening provision or as a timely notice to negotiate a new contract. The conjunction of events leads

³ The signatories to the contract included Council officers and several business agents of Local affiliates. The Pipefitters and the Electrical Workers, affiliated with the Council, did not sign the March 14, 1955, agreement. The Chemical Workers had withdrawn from the Council in December 1954 and therefore did not sign the agreement.

us to the latter conclusion. The Employer and the Council had begun wage negotiations approximately a year before the December 24, 1954, letter. They had apparently ended these discussions 3 months before the Council sent the letter. That letter was sent just a few days before the contract's automatic renewal date, an appropriate time to serve notice of termination. And the agreement executed by the Council and the Employer on March 14, 1955, the first day of the hearing in this proceeding, provided more than a wage increase, the Employer's stated purpose for proposing the agreement.

Accordingly, we find that the Council's December 24, 1954, notice terminated the contract between the Employer and the Council as of March 1, 1955, and that it is not, therefore, a bar to the petition filed on February 10, 1955.⁴

We 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. The appropriate units:

The Petitioner, the Steelworkers, and the Chemical Workers, each desires to represent the established production and maintenance unit. The Pipefitters seeks to sever from the production and maintenance unit a unit of pipefitters, and the Electrical Workers a unit of electricians. All the parties agreed that the units sought by the Pipefitters and the Electrical Workers are true craft units and that the unions seeking to represent them in separate units traditionally represent such crafts. In these circumstances, we find that the pipefitters and the electricians may, if they so desire, constitute separate appropriate units.⁵

We shall direct elections in the following voting groups of employees at the Employer's Henderson, Nevada, plant:⁶

(1) All pipefitters, plumbers, steamfitters, lead burners, and apprentices or helpers wholly assigned to the craft unit, if any, excluding all other employees, guards, and supervisors as defined in the Act.

(2) All electrician journeymen, electrician helpers, and electrical operators, excluding instrument men, all other employees, guards, and supervisors as defined in the Act.

(3) All production and maintenance employees, excluding all machinists, machinists' helpers, welders (machinists), office clerical employees, chemical, metallurgical, engineering and other professional employees and their assistants, timekeepers, time checkers, messengers, confidential employees, plant-protection force (guards and firemen), employees in groups (1) and (2), and supervisors as defined in the Act.

⁴ In view of our disposition of this question, we find it unnecessary to pass upon the other contentions raised by the parties.

⁵ *American Potash & Chemical Corporation*, 107 NLRB 1418

⁶ The record shows that the Council indicated to the hearing officer that if it desired to appear on the ballot in the elections, it would advise the Board by motion. It has not done so. Accordingly, we do not place its name on the ballot.

If a majority of the employees in voting groups (1) or (2) select the union seeking to represent them separately, those employees will be taken to have indicated their desire to constitute a separate bargaining unit and the Regional Director conducting the elections is instructed to issue a certification of representatives to that labor organization as bargaining representative of the voting group, which the Board, in such circumstances, finds to be appropriate for the purposes of collective bargaining.

On the other hand, if a majority of the employees in voting groups (1) or (2) do not vote for the union which is seeking to represent them in a separate unit, that group will appropriately be included in the production and maintenance unit and their votes shall be pooled with those in voting group (3),⁷ and the Regional Director conducting the election is instructed to issue a certification of representatives to the labor organization selected by a majority of the employees in the pooled group, which the Board, in such circumstances, finds to be a single unit appropriate for purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

MEMBER MURDOCK, dissenting:

I cannot agree with the majority's resolution of the contract-bar issue in this case. The majority finds that the written notice which the Intervenor sent to the Employer on December 24, 1954, was intended as a notice of a desire to negotiate a new contract rather than a notice pertaining to the existing contract's wage reopening clause and that therefore the notice prevented the contract from automatically renewing and operating as a bar to the rival petition filed February 10, 1955. This finding of intent is based on two facts, (1) that the notice was sent just a few days before the contract's Mill B or automatic renewal date and (2) that the contract signed by the Employer and the Intervenor on March 14, 1955, "provided more than a wage increase." It is with this conclusion that I take issue.

The best evidence of the intent of the sender of the notice is the language of the notice itself. In my opinion, the language of the notice is clear and unequivocal. In it the Council requested that "negotiations on the labor agreement for the Western Electro Chemical Co., *be continued* at the earliest possible date." [Emphasis supplied.] Thus, by requesting that "negotiations . . . be continued" the Council obviously sought a resumption of the negotiations which had previously been held between it and the Employer pursuant to its earlier reopening notice of December 22, 1953. That notice and the negotia-

⁷ If the votes are pooled, they are to be tallied in the following manner. The votes for the union seeking the separate unit in voting groups (1) and (2) shall be counted as *valid* votes, but neither for nor against any union seeking to represent the more comprehensive unit all other votes are to be accorded their face value, whether for representation in a union seeking the comprehensive group or for no union

tions that followed admittedly were confined to the contract's wage reopening provision. The notice of December 24, 1954, followed a break in those negotiations. To hold that the Council intended to terminate its contract with the Employer is to ignore the clear meaning of the language of the notice of December 24 in the light of the background circumstances. Because the notice itself clearly reflects the intent of the Council, the fact that the date of the notice coincides with the contract's Mill B date is, in my judgment, immaterial. Nor, in my opinion, does the fact that the agreement entered into between the Employer and the Council on March 14, 1955, provided more than a wage increase support the majority's finding that the December 24 notice was intended as a termination notice. As found by the majority no meetings were held pursuant to the December 24 notice. The March 14, 1955, contract resulted from the Employer's offer made to the Council to conform their existing contract with the contract the Employer and the Petitioner had executed on March 1, 1955, and not from any negotiations held pursuant to the December 24, notice. Moreover, the March 14, 1955, contract expressly provided that the 1953 contract "has been automatically extended to March 1, 1956, by failure of either party to reopen the agreement."

For the reasons stated above I would find that the notice sent to the Employer by the Council on December 24, 1954, did not operate to stay the automatic renewal of their 1953 contract. I would further find that the March 14, 1955, agreement was merely a modification by mutual assent of the renewed contract during its term which, under the principles established in *Republic Steel Corporation* (84 NLRB 483) and *Western Electric Company, Incorporated* (94 NLRB 54), did not open up the existing contract to rival claims of representation. I would therefore dismiss the petition as prematurely filed.

Pacific Maritime Association and Its Member Companies¹ and Seafarers International Union of North America, Pacific District, Comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks & Stewards, AFL² and International Longshoremen's and Warehousemen's Union,³ Petitioners. *Cases Nos. 20-RC-2651 and 20-RC-2675. June 21, 1955*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election⁴ issued by the Board on December 16, 1954, an election by secret ballot was conducted

¹ Hereinafter referred to as PMA.

² Hereinafter referred to as SIU

³ Hereinafter referred to as ILWU

⁴ *Pacific Maritime Association and Its Member Companies*, 110 NLRB 1647.