and Employer entered into an agreement, designated supplement VI to the national agreement, covering *inter alia* the production and maintenance employees of the Sunnyvale Plant of the Employer, which was executed on July 24, 1954, and effective July 1, 1954, for a period of 15½ months until October 15, 1955, subject to automatic renewal. UE was certified on December 27, 1954, to represent the employees of the Sunnyvale production and maintenance unit. By letter dated August 15, 1955, UE sent timely notice of desire to modify to the Employer in accordance with the provisions of the agreement. On October 6, 1955, within the certification year, the petition herein was filed.

As held in the *Centr-O-Cast* case,[4] absent unusual circumstances we do not consider a petition timely that is filed during a certification year. We find no unusual circumstances in this matter. The *Westinghouse* and *Ludlow Typograph* [5] cases are inapplicable because they involve situations where an agreement is entered into *within* the certification year and not prior thereto, as in the instant matter. Accordingly, we shall dismiss the petition herein. In view of our disposition of this matter it is unnecessary to decide other issues raised by UE.

[The Board dismissed the petition.]

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

[4] *Centr-O-Cast & Engineering Company*, 100 NLRB 1507.
[5] *Ludlow Typograph Company*, 108 NLRB 1463.

Aeronca Manufacturing Corporation *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW, AFL-CIO).[1] *Case No. 9-RC-2586. December 28, 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 Orville E. Andrews, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

[1] The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the Unions accordingly.

[2] Aeronca Independent Union, herein called the Intervenor, was permitted to intervene in this proceeding on the basis of its contractual interest in the employees whom the Petitioner seeks to represent.

We hereby affirm the hearing officer's refusal to permit the Petitioner to litigate the Intervenor's compliance status in this proceeding. See *General Furniture Corporation*, 109 NLRB 479; *Coca-Cola Bottling Company of Louisville, Inc.*, 108 NLRB 490.

The hearing officer referred to the Board the motions of the Employer and the Intervenor to dismiss the petition on the grounds that there is a contract bar and that the

Upon the entire record in this case,[3] 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.[4]

3. The Intervenor and the Employer maintain that their contract, covering the employees in the unit sought by the Petitioner, constitutes a bar to this proceeding.

The Intervenor was certified by the Board as the collective-bargaining representative of the Employer's employees in 1946, and has been the contractual representative since that time. Its most recent contract with the Employer, executed on March 3, 1955, contained a maintenance-of-membership provision. The Intervenor admittedly had not, on March 3 or at any time prior thereto, complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. Section 8 (a) (3) of the Act, as amended in October 1951, sanctions such a un onsecurity clause provided that "at the time the agreement was made or within the preceding twelve months [the contracting union] received from the Board a notice of compliance with Section 9 (f), (g), and (h)" of the Act.[5] The Intervenor, therefore, was not in compliance during the period required by the statute to authorize a union-security contract. It first took steps to effect compliance on July 27, 1955, and, we are administratively advised, achieved full compliance on August 25. The petition herein was filed on August 19.

The contract-bar issues presented in this case are: (1) whether the effect upon the contract of the Intervenor's noncompliance was remedied by the facts that it took steps to effect compliance before the petition was filed and achieved full compliance shortly after the petition was filed; (2) whether the operation of the unlawful union-security clause was effectively deferred by a supplemental agreement executed before the petition was filed; and (3) whether the petition was amended, after compliance was effected, so substantially as to require that it be treated as a new petition.

As to the first issue, the cases on which the contracting parties rely are distinguishable. In the *Dichello* case,[6] for example, the contracting union had clearly indicated its intent to comply with Section 9

unit sought in the petition is inappropriate. For the reasons given *infra*, these motions are hereby denied.

[3] The requests of the Petitioner, the Intervenor, and the Employer for oral argument are hereby denied as the record and the briefs, filed by each of them, clearly set forth the issues and the positions of the parties.

[4] The Petitioner contended that the Intervenor is not a labor organization within the meaning of the Act, and the parties failed to stipulate as to the Petitioner's status as a labor organization. We find, upon the entire record, that as both the Petitioner and the Intervenor are organizations which represent employees for collective bargaining purposes, they are labor organizations within the meaning of Section 2 (5) of the Act.

[5] *The Borden Food Products Company*, 113 NLRB 459.

[6] *Dichello, Incorporated*, 107 NLRB 1642.

prior to the execution of the contract. In the present case, the Intervenor admittedly had not done so. In the *New Idea* and *Industrial Luggage* cases,[7] the contracting unions had been in compliance, had fallen temporarily out of compliance at the time the contracts in question were executed, but had renewed their compliance before the petitions were filed.[8] In the present case, however, the Intervenor had never been in compliance prior to executing the March 3 contract, had not indicated any intent to comply on or before March 3, and had not achieved compliance when the petition was filed. Therefore, we find that the Intervenor's compliance, effected after the filing of the petition, was not timely so as to constitute the March 3 contract a bar.

The contracting parties rely chiefly on the second contention, namely, that the effect of the unauthorized membership-maintenance provision was dissipated on July 27. On that date not only did the Intervenor take steps to effect compliance, but its president executed a supplemental agreement with the Employer which provided that the membership-maintenance requirement in the March 3 contract "is suspended effective August 1, 1955, and of no effect from the date hereof until the Company is given written evidence of the Union's receipt of notice of compliance. . . ." Accordingly, the Employer and the Intervenor argue that the March 3 contract, as amended by the July 27 supplemental agreement, constitutes a bar.

The Petitioner maintains that the supplemental agreement did not effectively suspend operation of the unlawful clause in the contract. This agreement was negotiated and executed on behalf of the Intervenor only by its president, whereas both the Intervenor's contract with the Employer and its constitution, of which the Employer had copies, provide for collective bargaining to be conducted for the Intervenor by a committee designated for that purpose. The contract provides in this regard as follows:

> There shall be a bargaining committee chosen by the Union for the purpose of representing the employees and the Union in collective bargaining with the Company and establishing agreements on wages, hours, and working conditions. This committee shall be selected from members of the Union in good standing.

The contracting parties maintain that supplemental agreements were handled less formally than their principal contracts. However, the

[7] *New Idea, Division Avco Manufacturing Corporation,* 106 NLRB 1104; *Industrial Luggage, Inc*, 106 NLRB 1128

[8] See *Caribe Plastics Corp*, 107 NLRB 7, which states:

> The Board's recent decision in *New Idea, Division Avco Manufacturing Corporation,* 106 NLRB 1104, is not applicable to the facts in the instant case. In *New Idea*, the Board in its discretion held that a temporary lapse of compliance with Section 9 (f), (g), and (h) of the Act at the time of [sic] the contract was made because of administrative delays, followed by subsequent compliance before the representation petition was filed, did not vitiate the contract as a bar to an immediate determination of representatives.

requirement that the Intervenor must bargain collectively through a committee of its members is applicable not only to contracts but also to supplements thereto. In this connection, the contract provides as follows:

> Amendments and/or Modifications of this Agreement made by mutual agreement between the Union Bargaining Committee and the Company shall be effective and binding on both parties.

Furthermore, the Intervenor's constitution sets forth the duties of the president, which do not encompass, directly or indirectly, the negotiation or execution of agreements, and the president signed the March 3 contract only as a member of the negotiating committee, not as president.[9]

We conclude, under all the circumstances of this case, that the July 27 supplement did not meet the clear and explicit requirements of the contract it purported to modify. It failed, therefore, effectively to suspend the unlawful union-security provision of the contract.[10]

Finally, the contracting parties rely on the fact that the Petitioner amended its petition at the hearing, after the Intervenor had achieved full compliance. They maintain that the amendment was so substantial as to constitute a new petition.

At the hearing, which was held on September 21 and 22, 1955, all the parties stipulated to the appropriateness of the contractual unit. Thereupon, the Petitioner moved to amend its petition to conform the unit description therein to the stipulation. This motion was granted without objection. The Employer and the Intervenor maintain that, because of the variance between the unit descriptions in the original and amended petitions, the amendment constituted a new petition and, therefore, as the Intervenor had achieved compliance before the amendment, the contract was then lawful and a bar to the amended petition.

As a matter of fact, however, both the original and amended petitions describe the same type of unit, the amendment comprising essentially a change in descriptive wording only.[11] The amendment, therefore, did not have the effect of a new petition,[12] and the Intervenor's

[9] There is testimony in the record about other supplemental agreements executed for the Intervenor only by its president. The only one in evidence, however, other than the July 27 supplement, is one dated August 24, 1955, providing for a wage increase. That supplemental agreement, in contrast with the one of July 27, was negotiated on behalf of the Intervenor by a bargaining committee and was ratified at a membership meeting before it was executed.

[10] In view of our determination as to the defective execution of the July 27 agreement, we consider it unnecessary to pass upon the various other grounds on which the Petitioner attacked the validity of this agreement

[11] As the unit found appropriate is substantially similar to the one sought in the original petition, there is no merit to the contention of the Employer and the Intervenor that the unit petitioned for was inappropriate.

[12] *Westinghouse Electric Corporation,* 107 NLRB 16; *Hyster Company,* 106 NLRB 347.

compliance, as found above, was not timely with respect to the original petition.

Accordingly, the contract in effect at the time the petition was filed contained an unauthorized maintenance-of-membership provision. As such a contract cannot constitute a bar to a present determination of representatives,[13] 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. In accordance with the stipulation of the parties, we find that the following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees at the Employer's 3 Ohio plants, 2 in Middletown and 1 in Miamisburg, including leadmen, inspectors, and shop clerks, but excluding clerical and administrative employees, draftsmen and engineers, professional employees, watchmen, guards, superintendents, foremen, assistant foremen, inspector-supervisors, and all other supervisors as defined in the Act.

[Text of Direction of Election [14] omitted from publication.]

[13] *The Borden Food Products Company, supra.*

[14] We find without merit the Petitioner's contention that the Intervenor should not be accorded a place on the ballot in the event an election were directed in this proceeding.

Casey-Metcalf Machinery Co.,[1] Crook Company, Electric Tool & Supply Co., George M. Philpott Co., Inc., Shaw Sales & Service Co., Smith-Booth-Usher Co., and Brown-Bevis Industrial Equipment Co., Petitioners *and* International Union of Operating Engineers, Local Union No. 12, AFL–CIO and Teamsters Automotive Workers Local Union No. 495, AFL–CIO.[2] *Cases Nos. 21–RM–351, 21–RM–352, 21–RM–353, 21–RM–354, 21–RM–355, 21–RM–356, and 21–RM–357. December 28, 1955*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

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

[1] During the hearing, Casey-Metcalf Machinery Co., the Petitioner in Case No. 21–RM–351, requested permission to withdraw its petition. The Acting Regional Director granted the request without prejudice.

[2] The AFL and CIO having merged, we are amending the identification of the affiliation of the Unions The Unions are hereinafter respectively referred to as the Operating Engineers and the Teamsters.