

In the alternative, the Petitioner is willing to have an election in the existing unit. However, the Petitioner has not made a sufficient showing of interest in this larger unit, and we shall therefore not direct an election in this unit.

In view of the foregoing, we shall dismiss the petition.

[The Board dismissed the petition.]

Consolidated Paper & Box Manufacturing Company, Incorporated, Petitioner and Local Union #694, United Paperworkers of America, AFL-CIO.¹ Case No. 5-RM-292. January 20, 1956

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 Henry L. Segal, 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. The Employer-Petitioner, a Virginia corporation with its principal place of business located in Richmond, Virginia, is engaged in the manufacture of folding and setup paper boxes and in the wholesale distribution of coarse paper products. The Union contends that an existing contract between it and the Employer is a bar to an election at the present time. The Union has been the certified bargaining representative for a unit of the Employer's production and maintenance employees since approximately 1940, and has entered into successive bargaining agreements with the Employer covering such a unit of employees.

The parties executed a contract on July 19, 1954, article XII of which provides that "Except as otherwise provided herein, this Agreement shall become effective as of July 19, 1954, and remain in full force and effect until midnight July 18, 1956, and thereafter from year to year unless either party shall have given sixty days' written notice prior to July 18, 1956, or July 18th in any year of extension hereof to the other of its desire to change or terminate the same. Upon any such notice of a desire to change this Agreement, conferences will be held between the parties within thirty days in an effort to arrive at an

¹ The AFL and CIO having merged since the hearing in this case, we are amending the Union's designation.

agreement on the proposed change or changes." Article X, section 4 of this same agreement provides that "This Agreement may be reopened for negotiation on the subject of wages by either party giving to the other written notice of its desire to do so sixty days prior to (1) January 19, 1955; (2) July 19, 1955; or (3) January 19, 1956 (hereinafter called 'reopening date'). In the event such notice is given, the parties shall meet in collective bargaining at least thirty days prior to the reopening date for which notice is given, and in the event no agreement has been reached by such reopening date, this Agreement shall be automatically terminated in its entirety."

By letter dated May 7, 1955, the Union advised the Employer that it desired to reopen the contract to discuss the question of wages. By letter dated May 17, 1955, counsel for the Employer wrote the Union that the Union's letter had been referred to him, and requested the Union to get in touch with him so that a mutually suitable date could be agreed upon for meeting for the purpose of negotiating changes in the wage scale. At some unspecified date thereafter, a representative of the Union, while negotiating with counsel for the Employer on a contract for another company, requested that the proposed wage negotiations with the Employer be postponed until after the Employer's employees returned from vacation,² and counsel for the Employer acceded to this request. There is no evidence that the Union thereafter made any effort to arrange a meeting until July 27, when the parties agreed to meet on August 11. At the August 11th meeting, the Employer negotiated some grievances with the Union which had arisen under the contract prior to July 19, 1955, and then informed the Union that it no longer considered that the Union represented a majority of its employees and that it planned to file the instant petition.³

The Union contends that the contract has not terminated because article X, section 4 of the contract has never come into operation, as certain conditions precedent were never met, i. e., because no meeting was ever held 30 days prior to the reopening date and because the Employer has neither agreed nor disagreed to new wage scales. The Union takes the position, therefore, that the present petition is untimely filed with regard to the expiration date of the contract.

The Employer, on the other hand, takes the position that, as the Union timely reopened the contract for discussion of wage changes, and as no new agreement was reached by the July 19, 1955, reopening

² It appears from the record that most of the Employer's employees were on vacation from sometime during the first week in July until around July 18, 1955.

³ The Union contends that this meeting was arranged for the purpose of discussing the proposed wage increases, while the Employer alleges that it ceased to recognize the Union as of July 19, 1955, and that the August 11, 1955, meeting was agreed to by it solely for the purpose of processing grievances which had arisen under the contract prior to that date, and to inform the Union that it was no longer recognized and that the Employer intended to file a petition with the Board.

date, the contract has automatically terminated by its own terms. The Employer points out that it responded to the Union's letter on May 17, 1955; that by the terms of article X, section 4, the latest date for an initial meeting between the parties was June 19, 1955; that the vacation period of its employees advanced by the Union as its reason for failing to request a conference sooner did not commence until the first week in July; and that the Union therefore had ample time for a meeting between May 17 and June 19, 1955, without conflicting with the vacation period. The Employer further alleges that it has considered the contract terminated since July 19, 1955, and has honored it since that time only in relation to events covered by its terms which occurred prior to that date.⁴

We find merit in the Employer's position. We believe that article X, section 4, came into operation when the Union gave timely notice under that clause of its desire to reopen the contract on the subject of wages. The main question appears to be whether, by agreeing to the Union's request for postponement of the first meeting until after the vacation period, the Employer impliedly waived or modified the provisions for automatic termination of the contract if no agreement was reached before July 19, 1955. We do not believe that it did. The Union could not reasonably have supposed that, in consenting to postponement of the meeting, the Employer was also impliedly agreeing to a new deadline in lieu of the July 19, 1955, deadline for reaching agreement on wage changes. There was no discussion of any change in that deadline, and there is therefore no basis for inferring that any modification had been agreed to between the parties. Nor, in our opinion, was the Union warranted in inferring, from the Employer's agreement to postpone the meeting, that the Employer was thereby consenting to elimination of the automatic termination provision in its entirety. The elimination of such provision would constitute a change in an important term of the contract of far greater significance than the waiver of the June 19, 1955, deadline for the original meeting. The only realistic view is, we believe, that the Union knowingly and voluntarily incurred the risk that the Employer would invoke the automatic termination provision if no agreement was reached between the parties by July 19, 1955. It cannot, therefore, complain now because that is what actually occurred.

We find, therefore, that the contract executed July 19, 1954, between the Employer and the Union terminated according to its own provisions on July 19, 1955, and that such contract is not a bar to the present petition. Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Em-

⁴ In this connection the Employer testified, without contradiction, that prior to July 19, 1955, it at no time refused to meet or negotiate with the Union, and that it had in fact stood ready to negotiate with the Union until July 19, 1955.

ployer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. With regard to the composition of the unit, the parties disagree only as to whether there are any temporary employees, and if so, whether they should be included in the unit. In the past, the Employer has hired employees during its busy season in the late summer and fall whom it has designated as "temporary employees," informing them of this status when they were hired. Such employees have not, in the past, received benefits granted to permanent employees, and the Employer has made no effort to reemploy the same temporary employees during its busy season from one year to the next. Although the Union originally desired to bargain for these employees as part of the certified unit, they have never been covered by the contracts between the parties, in deference to the Employer's desire that they be excluded.

The Employer stated at the hearing, in October, that it then had no temporary employees, but that it desires that any such employees as it may have during the eligibility period be included in the unit and allowed to vote. The Union opposes their inclusion on the ground that they have never been included in the contract unit. As the employment of the temporary employees, if any, is likely to be seasonal and nonrecurring, we shall exclude them from the unit.

We find, in agreement with the parties, that the following group of employees at the Employer's plant in Richmond, Virginia, which conforms to the unit covered by prior contracts between the parties constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees, excluding shipping clerks, truckdrivers, office and salaried employees, janitors, temporary employees, watchmen, assistant foremen, foremen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Raymond Pearson, Inc. and Local 744, International Association of Machinists, AFL-CIO, and Local 968, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL-CIO, Jointly. *Case No. 39-CA-441. January 23, 1956*

DECISION AND ORDER

On October 26, 1955, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and