

**Anheuser-Busch, Inc., Byrd Sales Company, Inc., Denver Beverage Sales Company, Mile-High Distributing Company, Model Distributing Company, Murray Brothers, Inc., Premium Beverages, Inc., and Western Distributing Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 775, AFL-CIO, Petitioner.**  
*Case No. 30-RC-1135. July 12, 1956*

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Clyde F. Waers, hearing officer.<sup>1</sup> 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 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 Employer and the Intervenor contend, and the Petitioner denies, that a current contract between the Employer and the Intervenor, covering employees involved herein, effective from March 1, 1956, to March 1, 1958, and thereafter is a bar to this proceeding.

The Employer and the Intervenor have had contracts for several years. Pursuant to timely notice, they began negotiating a new contract on January 25, 1956, to replace the agreement expiring March 1, 1956. On February 17, the Petitioner filed its petition in Case No. 30-RC-1129 (not reported in printed volumes of Board Decisions and Orders) requesting a unit of employees at the Employer's plants similar to the unit sought in the instant case. The Employer, upon being informed thereof, broke off negotiations. On February 20, the Petitioner withdrew its petition. The Employer and Intervenor thereupon resumed negotiations and reached agreement about 11:45 p. m. on February 29. The contract was reduced to writing and signed by the Intervenor and 7 of the 8 concerns constituting the Em-

<sup>1</sup> The Employer's name appears herein as amended at the hearing.

After the hearing, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local No. 44, AFL-CIO, hereinafter called the Intervenor, filed a motion to correct its brief. No opposition appearing thereto, the motion is hereby granted.

We find no merit in the contentions as to the adequacy of the Petitioner's showing of interest, as showing is an administrative matter not litigable by the parties. *Texas Construction Material Company*, 114 NLRB 378. Moreover, we are satisfied that the Petitioner has an adequate showing.

ployer by about 4 a. m. on March 1; it was signed by the remaining concern about 7 a. m. on that day. In the meantime, on February 29, at about 4:30 p. m., the Petitioner, without making another claim to representation, filed the instant petition. Neither the Employer nor the Intervenor had notice of such filing before they executed the contract.

Under long-established practice, the Board has held a contract to bar an election unless timely notice of a rival claim is given the employer, followed by a timely petition,<sup>2</sup> or unless a petition alone is duly filed prior to the execution of the contract.<sup>3</sup> Thus, we have considered the mere filing of the petition to be sufficient notice to the employer. However, as the result of our long experience in the application of the latter rule, the Board is now convinced that too serious a burden is placed upon voluntary collective bargaining, which it is the Act's purpose to foster and encourage, to hold that a contract executed without notice of a rival claim or petition will not bar an election if the petition in fact was filed before the day the contract was executed. We are therefore of the opinion that stability in collective bargaining relationships, and in turn the purposes of the Act, will be better served by requiring that, where no timely rival claim is made, unless actual notice of the filing of a rival petition is given the employer before a contract is executed, the contract will be a bar to an election. In the instant case, the Employer had no such notice. Accordingly, we find that the contract executed by the Employer and the Intervenor on March 1, 1956, constitutes a bar to an election at this time, and we shall therefore dismiss the petition.<sup>4</sup>

[The Board dismissed the petition.]

<sup>2</sup> *General Electric X-Ray Corporation*, 67 NLRB 997.

<sup>3</sup> *The Grace Company*, 73 NLRB 1286, 1287.

<sup>4</sup> As we dismiss on contract-bar grounds, it is unnecessary to consider the other grounds urged by the Employer and the Intervenor as grounds for dismissal of the petition.

To the extent that *The Grace Company*, *supra*, is inconsistent with our decision in the instant case, it is hereby overruled.

**C. K. Williams & Co.<sup>1</sup> and Association of C. K. Williams & Co. Employees (Ind.), Petitioner.<sup>2</sup> Case No. 14-RC-2981. July 12, 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 William F. Trent, hearing

<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> The Petitioner's name appears as corrected at the hearing.