

**Westinghouse Electric Corporation and Local 713, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner.**  
*Case No. 13-RC-5070. November 15, 1956*

## DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Hubert J. Sigal, 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.<sup>1</sup>

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:

On June 30, 1954, the Employer and the UE executed an agreement, national in scope, to run until October 15, 1955, and yearly thereafter in the absence of timely notice to terminate. It contained a modification clause which provided in part as follows:

[T]he Companies and the Union agree that neither of them will request before August 15, 1955, consideration of any proposed changes in or additions to this agreement. . . .

If the parties do not reach agreement prior to Oct. 15, 1955, with respect to any requested contractual changes or additions or wage and salary adjustments submitted on or after August 15, 1955, . . . the Union may strike after the beginning of the next succeeding contract year, in support of any such requests made by it. Such strike shall not be a violation . . . of this Agreement, but either party may, upon not less than one (1) day's written notice given to the other during such strike, thereupon terminate this Agreement. . . .

Pursuant to this provision, the parties commenced negotiations at the request of the UE for modification of the contract. Failing to reach agreement on the suggested proposals for modification, the UE began a nationwide strike of the Employer's plants in October 1955. This strike continued for several months. On March 26, 1956, the

<sup>1</sup> United Electrical, Radio & Machine Workers of America and its Local 1105, herein collectively called UE, were permitted to intervene upon the basis of a contractual interest. International Union of Electrical, Radio and Machine Workers, AFL-CIO, was permitted to intervene upon a showing of interest.

parties agreed upon modifications of their national agreement and executed supplement VII thereto, which set forth the changes agreed upon and extended the term of the contract to October 15, 1960.

This new agreement is asserted by the UE to be a bar to the petition filed on June 12, 1956.<sup>2</sup> The Petitioner contends that the contract is not a bar because it is a premature extension of the prior agreement.<sup>3</sup> The Employer and the IUE take no position on the contract-bar issue.

The purpose of the Board's premature extension rule is to insure the employees the right to challenge an incumbent union's representative status at predictable and reasonable intervals. It, like the contract-bar rule itself, is essentially a discretionary principle and its applicability depends upon the circumstances surrounding the negotiation and execution of a new or supplemental agreement.<sup>4</sup> Accordingly, when because of its terms a prior contract has been effectively removed as a bar before the execution of a new agreement asserted as a bar, the premature extension doctrine is not applicable.<sup>5</sup>

In a previous decision<sup>6</sup> involving the UE and another employer, the Board found that the contract in issue, containing a midterm modification provision similar to that set forth above, was not a bar to a representation proceeding. The modification clause there, as here, was unlimited in scope, in that either party could require negotiations with respect to any or all of the provisions of the contract. There, if the parties failed to reach agreement as to any proposed modifications within 60 days, the UE was permitted to strike, in which event the Employer was permitted to terminate the agreement upon 3 days' written notice to the UE.

In that case the Board held that the contract was not a bar to a petition timely filed with respect to the modification provision because that clause, viewed realistically, insured no greater degree of stability in the relationship between the parties than did the usual automatic-renewal clause of an agreement, which the Board has consistently held opens a contract to a timely rival petition. In either situation, until the time for giving notice has passed, or the parties have executed a new or modified contract, the degree of industrial stability which the Board's contract-bar principles were designed to preserve does not exist.

In the instant case it is clear that, once the contract was opened pursuant to the modification provision, the bargaining relationship between the parties became unstabilized and remained so until the supplemental agreement, asserted as a bar, was executed. It there-

<sup>2</sup> The contract covers the employees sought by the Petitioner.

<sup>3</sup> The Petitioner asserts that the previous agreement was automatically renewed on October 15, 1955, in absence of notice by either party of intent to terminate.

<sup>4</sup> *Congoleum-Narn, Inc.*, 115 NLRB 1202.

<sup>5</sup> See *Heintz Manufacturing Company*, 116 ULRB 183.

<sup>6</sup> *General Electric Company*, 108 NLRB 1290.

fore follows that during the entire period when the contract was open for negotiations, a rival petition would have been timely.<sup>7</sup> Moreover, such negotiations occurred at a time which was certain and predictable from the terms of the earlier contract. Under these circumstances, we conclude that the agreement of March 26, 1956, was not a premature extension of the earlier agreement, and that it is therefore a bar to the instant petition.<sup>8</sup> Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

<sup>7</sup> See *General Electric Company*, 110 NLRB 992

<sup>8</sup> We find no merit in the Petitioner's contention that supplement VII does not stabilize the relationship between the parties and therefore is not a bar. One section of supplement VII provides that the wage provision of the local contracts between UE's Local Unions and the Employer's various plants may be opened after August 14, 1956, and that if agreement is not reached within 30 days, the right to strike or lockout may be exercised within the succeeding 30 days, after a 15-day notice has been given. However, we find that the narrow reopening clause, permitting only wage adjustments, without the right to terminate the contract upon failure of agreement, is not sufficient to remove the contract as a bar. *Dick Brothers, Inc.*, 107 NLRB 1054.

**Mack Trucks, Inc. and International Union, United Automobile Aircraft and Agricultural Implement Workers of America, AFL-CIO,<sup>1</sup> Petitioner.** *Case No. 2-RC-8235. November 15, 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 Max Schwartz, 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. 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 unit:

The Petitioner seeks to represent all the salaried office clerical employees at the Employer's Plainfield, New Jersey, plant. The Employer contends that only separate units of home office clerical and plant office clerical employees are appropriate. At the hearing the

<sup>1</sup> The names of the parties appear as corrected at the hearing.