

delay" 2 days before the election, accompanied by antiunion statements, was calculated to, and did, interfere with a free election.³ I would therefore, set aside the election.

CHAIRMAN LEEDOM took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

³ See *Le Roi Company*, 105 NLRB 309.

Wyman-Gordon Co., Ingalls Shepard Division and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO¹ and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO,² Petitioners. *Cases Nos. 13-RC-4916 and 13-RC-4997. January 18, 1957*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Rush F. Hall, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

Upon the entire record in this case, the Board finds:⁴

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.⁵

¹ Herein referred to as the Boilermakers.

² Herein referred to as the UAW.

³ The Employer moved that the UAW's petition be dismissed and that the petitions herein not be consolidated because the UAW's showing of interest was untimely made. The Board has consistently held that showing of interest is a matter for administrative determination and cannot be litigated in a representation proceeding. *California Furniture Shops, Ltd.*, 115 NLRB 1399. Moreover, we are administratively satisfied with the UAW's showing of interest in this proceeding.

The Employer also contends that both petitions are barred on the ground that a petitioner who withdraws a petition is prohibited from again filing a new petition affecting the same employer and employees for a period of 6 months. The Board's records show that the Boilermakers and the UAW did file and withdraw petitions less than 6 months prior to their filing of the petitions herein, but the withdrawals in both cases were made *without* prejudice to the filing of new petitions. We find no merit in the Employer's contention as the limitation alleged by the Employer applies only to cases where the Petitioner's withdrawal has been *with* prejudice.

⁴ The Employer's request for oral argument is hereby denied as the record and the briefs adequately present the issues and positions of the parties.

⁵ Employees Independent Union of Wyman-Gordon, hereinafter called the Independent, was permitted to intervene in both cases on the basis of its contractual interest. The UAW intervened in Case No. 13-RC-4916, on the basis of a showing of interest.

The Employer would not stipulate that the Boilermakers and the UAW are labor organizations. Moreover, the Boilermakers and the UAW refused to stipulate as to the Independent's status as a labor organization. The record reveals that all three organizations exist for the purpose of bargaining collectively on behalf of their members with Employ-

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.

The Employer and the Independent assert their contract effective November 9, 1955, to November 1, 1957, as a bar to the present petitions. The UAW and the Boilermakers contend that this contract is a premature extension of an earlier agreement between the Employer and the Independent and therefore is not a bar to this proceeding. The Employer and the Independent argue that the premature extension rule should not be applied because certain extraordinary circumstances rendered the execution of the 1955 contract necessary.

On November 10, 1954, the Employer and the Independent signed a contract covering the Employer's production and maintenance employees, including employees sought herein by the Boilermakers. This agreement was to remain in effect until June 30, 1956, and to renew itself automatically for annual periods thereafter unless either party gave notice of its desire to amend or terminate at least 60 days before the anniversary date. On November 9, 1955, the Employer and Independent signed a supplementary agreement extending the term of their agreement to November 9, 1957. The petition in Case No. 13-RC-4916 was filed March 15, 1956, and the petition in Case No. 13-RC-4997 was filed April 30, 1956. As the *Mill B* date of the 1954 contract was May 1, 1956, both petitions were timely filed with respect to that agreement.

The Employer asserts that the supplementary agreement of November 1955 was executed because of sound business and economic reasons, and that the contract was ratified by the Independent's membership.⁶ The Independent agrees with the position of the Employer and states that the 1955 agreement was not made to forestall the claims of rival labor organizations or to frustrate the wishes of the employees to select other bargaining agents, but rather to maintain stable labor-management relations in the plant. In support of its position the Employer presented evidence showing that wage increases were granted by major steel producers, fabricators, and automobile and farm equipment companies from the spring of 1955 to January 1956, throughout the Nation and particularly in the area of the Employer's plant. Apparently because of this, the Employer opened up its contracts with unions

ers concerning hours, wages, and other conditions of employment. Accordingly, we find that the Boilermakers, UAW, and Independent are labor organizations within the meaning of the Act *Knox Corp*, 104 NLRB 789

⁶ The Employer further contends that the individuals who negotiated the 1954 contract for the Independent are presently officials of the UAW and that their insistence on an 18-month contract without a wage reopener clause precipitated the economic crises necessitating the execution of the 1955 agreement. The Employer declares their action was taken deliberately to create dissatisfaction with the Independent and to cause the defection of its membership. The Employer urges that the application of the premature extension rule would be inequitable in these circumstances. The Employer has not, however, supported this claim with proof, and we therefore do not find it to have merit.

representing various segments of its employees in order to grant a series of wage increases. The Employer negotiated eight such increases from January 11, 1955, to January 11, 1956,⁷ including an increase provided by the agreement here involved which was effective in terminating a strike called by the Independent.

It is apparent that the Independent's contract of November 9, 1955, executed approximately 6 months before the *Mill B* date of the November 10, 1954, contract, constituted a premature extension of the 1954 contract. We do not find, in the facts recited by the Employer, sufficient reason to avoid application of the Board's well-established doctrine that such a contract is not a bar to an election sought by a petition timely filed with respect to the term of the original agreement.⁸ Accordingly, we find that there is no bar to a present determination of representatives.

4. The Boilermakers seeks to sever from an existing production and maintenance unit represented by the Independent a group of forge shop employees together with certain categories in the Employer's furnace department. The UAW seeks to represent a production and maintenance unit co-extensive with that presently represented by the Independent. The Employer and the Independent agree that a production and maintenance unit is appropriate, but they and the UAW contend that the unit sought by the Boilermakers is not appropriate on either a craft or departmental basis.

The Employer manufactures various types of forgings, particularly crankshafts for the automotive and aircraft industries, in a plant comprising nine departments including forge shop, heat treat, finish, maintenance, electrical shop, boilerhouse, furnace, shipping, and steel cutting departments. The present production and maintenance unit numbers 1,139 employees⁹ from which the Boilermakers seeks to sever approximately 550.

⁷ Over the objection of the Boilermakers and the UAW, the hearing officer allowed the Employer to present testimony pertaining to its negotiations with unions not a party to this proceeding. The Boilermakers and the UAW subsequently moved to strike this testimony and the hearing officer referred this motion to the Board. As a representation hearing is a nonadversary proceeding not governed by the usual rules of evidence and as the testimony is relevant to the Employer's claim that unusual events required the negotiation of a supplementary agreement, we shall overrule the objection of the Boilermakers and the UAW.

⁸ The Board has customarily held that a new agreement, prematurely extending the term of a previous one, does not become a bar merely because its execution was dictated by economic considerations; nor even where the extended agreement was executed in good faith; or ratified by a majority of the employees; or where the contract was consummated to avoid a strike. *International Mineral & Chemical Corporation*, 113 NLRB 53; *Potash Company of America*, 113 NLRB 340; *American Steel & Wire Division of United States Steel Corporation*, 109 NLRB 373; *Worthington Corporation*, 103 NLRB 1661; and *Albion Malleable Iron Company*, 90 NLRB 1640.

⁹ The Employer's machine shop employees, electricians, and die shop employees are represented in separate units by affiliates of the International Association of Machinists, International Brotherhood of Electrical Workers, and International Die Sinkers Conference, respectively. These units do not include any of the employees in the forge shop.

The forge shop department includes 4 forge shops, located in separate buildings, under the single supervision, on each of 2 shifts, of a forge shop superintendent.¹⁰ The forge shop employees are engaged in various functions relating to the forging operations, including tasks that range from janitorial and trucking services to machine operations requiring widely varying degrees of skill. Thus, although many of the operations are fairly repetitive and require only a minimum of experience, the most skilled category, that of the hammermen, who operate heavy steam type drophammers used to roll, shape, and edge heated steel billets, requires as much as 5 years of experience in order to become proficient in all the various forging operations performed by the "units" of crews in which they work.

The furnace department is headquartered in the heat treat department building and is supervised by a foreman who, like the forge shop superintendent, reports directly to the Employer's general superintendent. Employees of the furnace department maintain furnaces in both the forge shop and heat treat department.

Specifically the Boilermakers seeks to include in its proposed unit the forge shop categories of hammermen, die oilers, furnace operators, upset operators, dammerel twisting machine operators, dammerel helpers, forging press operators, manipulator operators, tong press operators, oil carriers, forge shop truckers, and helpers and laborers in the forge shop. It also seeks the inclusion, if the Board finds that they may appropriately be joined in the unit, of the following furnace department categories: furnace repairmen, furnace control men, brickmasons, brickmason helpers, blacksmiths, blacksmith helpers, and the welder. It would exclude from the unit the forge shop classifications of yardmen, diesetters, diesetter leaders, tumbler repairmen, diesetter helper, control and visual inspectors, lathe index men, lathe inspectors, lead cast layout inspectors, lead cast inspector leader, pickle control inspectors, inspector helpers, oil control man, tool and detail men, and stock control men.

It is apparent that the unit primarily sought by the Boilermakers is neither an appropriate craft nor departmental unit, as it consists of a heterogeneous grouping of employees performing different tasks, with varying degrees of skill, which cuts across departmental lines. The forge shop employees, however, constitute a traditional departmental group such as the Board has found may constitute a separate unit if they so desire, despite a previous history of bargaining in a broader unit.¹¹ The Employer and Independent assert, however, that

¹⁰ On the third shift, when comparatively few employees are at work, the skilled workmen have no supervision and the unskilled employees are under the supervision of the furnace department

¹¹ *Plomb Tool Company*, 87 NLRB 134; *Green Bay Drop Forge Company*, 95 NLRB 1122; *International Harvester Company (Louisville Works)*, 100 NLRB 1349; *The Billings and Spencer Company*, 104 NLRB 928.

the Boilermakers has not traditionally represented forge shop employees. We reject this contention as the Boilermakers are, in fact, a traditional representative of forge shop groups.¹² As we have found that the forge shop employees perform forging operations of the type which the Board customarily permits to be severed from an existing plantwide unit, and as the Petitioner is affiliated with an International that traditionally represents such units, we shall direct a separate election among the forge shop department employees to determine their desires for separate representation.

There remain for consideration several forge shop categories whom the Boilermakers would exclude from the unit which it seeks. These employees all work in subdivisions of the forge shop department, are employed in work relating to the forging process, and are under the general forge shop supervision. Although most of these employees are carried on seniority lists other than the forge shop list, this fact does not preclude their inclusion in a forge shop unit.¹³ Therefore, as they are employed in, and are part of, the forge shop department, we shall include the following categories in the forge shop voting group: yardmen, diesetters, tumbler repair man, diesetter helper, control and visual inspectors, lathe index men, lathe inspectors, lead cast layout inspectors, pickle control inspectors, inspector helpers, oil control man, and tool and detail men. We shall also include the stock control men, whose duty it is to keep records of the movement of steel throughout the forging process from the time of its first receipt in the forge shop department until it is forwarded to the heat treat department. All their time is devoted to recording forge shop operations. Although the record does not specify their work location, we conclude that their functions are essentially those of plant clerical employees and, in the absence of any agreement to exclude them, we include them in the forge shop voting group. There is some suggestion in the record that the diesetter leaders and the lead cast inspector leader may regularly assume the exercise of supervisory authority. The record, however, is not sufficient for us to determine their status. We shall, therefore, permit them to vote subject to challenge and will further investigate the facts relating to their status in the event that their votes become determinative of the results of the election.

¹² See cases cited in footnote 11, *supra*. In these cases, the Petitioner sought and was granted forge shop units, such as are sought herein. The Petitioner therein was the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL. The Board takes judicial notice of the fact that the Blacksmiths and the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL, merged on July 7, 1953, to form the International concerned herein. Accordingly, we find the Boilermakers is a traditional representative of forge shop units.

¹³ *The Billings and Spencer Company, supra*.

We shall direct elections by secret ballot among the following separate groups of employees at the Employer's Harvey, Illinois, plant:¹⁴

(A) All forge department employees including hammermen, die oilers, furnace operators, upset operators, dammerel twisting machine operators, dammerel helpers, forge shop laborers, forging press operators, oil carriers, manipulator operators, diesetters, diesetter leaders, diesetter helpers, yardmen, control and visual inspectors, lathe index men, lathe inspectors, lead cast layout inspectors, tumbler repairmen, lead cast inspector leader, pickle control inspectors, inspector helpers, oil control man, tong press operators, forge shop truckers, forge shop helpers, tool and detail men, and stock control men, but excluding die shop and die shop maintenance employees, machinists, shear operators, shear helpers, electricians and all other maintenance employees, office clerical employees, guards, and supervisors as defined in the Act.

(B) All production and maintenance employees including leaders, but excluding office clerical employees, plant clerical employees, guards, canteen employees, laboratory employees, engineering, safety and first-aid employees, die shop employees who work on dies and parts of dies used in manufacture and completion of forgings, machinists, repairmen and repairmen's helpers, truck repairmen, machine specialists, welders, oilers, cranemen, tuners, their apprentice and helpers working in and out of the north and south machine shops of the forge division and machine shop of the heat treat finish divisions, and all construction and maintenance electricians, their helpers and apprentices, and all guards and supervisors as defined in the Act.¹⁵

5. If a majority of the employees in voting group (A) select the Boilermakers which is 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 election is instructed to issue a certification of representatives to the Boilermakers for such unit, which the Board in such circumstances finds to be appropriate for purposes of collective bargaining. However, if a majority of the employees in voting group (A) does not vote for the Boilermakers, such group will appropriately be included with the employees in voting group (B) and their votes will be pooled

¹⁴ We are administratively satisfied that the Boilermakers has a sufficient showing of interest in the forge shop voting group which we have found appropriate, although it is broader than that included in the Boilermakers' alternative request. If, however, the Boilermakers does not desire to proceed to an election in such broader voting group, we shall permit it to withdraw its petition upon notice to the Regional Director, within 5 days from issuance of this Decision and shall thereupon vacate the Direction of Election.

¹⁵ This unit description is in substantial accord with the contract unit presently represented by the Independent. The Boilermakers has indicated that it does not desire to appear on the ballot in the production and maintenance unit.

with those in voting group (B).¹⁶ The Regional Director conducting the election is instructed to issue a certification of representatives to the labor organization elected by a majority of the employees in the pooled group which the Board in such circumstances finds to be appropriate for purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

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

¹⁶ If the votes are pooled, they are to be tallied in the following manner: the votes for the Boilermakers shall be counted as valid votes, but neither for nor against UAW or the Independent which seek to represent these employees in the more comprehensive production and maintenance unit; all other votes are to be accorded their face value whether for representation by a union seeking the comprehensive unit or for no union.

General Refractories Company and International Association of Machinists, AFL-CIO, Petitioner. *Case No. 6-RC-1797. January 18, 1957*

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 Donald J. Myers, 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.

3. Since 1944 the Intervenor, United Construction Workers, Division of District 50 United Mine Workers of America, on behalf of itself and Local Union No. 290, has represented a unit of production and maintenance employees at the Employer's Claysburg, Pennsylvania, operation, where the Petitioner now seeks to sever a unit of machine shop employees. Successive contracts have been executed since then, with the last one timely opened for negotiation of a new contract by letter of May 11, 1956. A stipulation agreement of July 10, 1956, providing that either party might terminate on 10 days' notice, continued the contract indefinitely beyond its July 15 anniversary date. The petition here was filed June 20, 1956. A separate pension agreement between the Employer and the Intervenor runs until July 15, 1957. Both the Employer and the Intervenor urge dismissal of the petition on the ground of contract bar. It is well