American Smelting and Refining Company, Silver Bell Operation *and* Local Union No. 428, International Union of Operating Engineers, AFL–CIO and Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 310, AFL–CIO, Petitioners.
Cases Nos. 21–RC–4681 and 21–RC–4768. July 31, 1957

DECISION AND ORDER

Upon petitions duly filed under section 9 (c) of the National Labor Relations Act, a hearing was held before James W. Cherry, Jr., hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Jenkins].

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. 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 (District 50, United Mine Workers of America, Local Union No. 13886) contend that their current contract constitutes a bar to the petitions filed by Local Union No. 428, International Union of Operating Engineers, AFL–CIO, herein called the Operating Engineers, and by Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 310, AFL–CIO, herein called the Teamsters.

The Employer is engaged in mining and milling of copper ore at Silver Bell, Arizona, where it operates 2 open pit mines, one of which is located within a mile and the other about 4 miles from the milling or concentrator operation. The Operating Engineers and the Teamsters seek to represent separate, different units of employees who work at the mine operations.

On December 15, 1954, the Employer entered into a 2-year contract with the Intervenor covering all production and maintenance employees at the mill. During most of this period, the Employer's mining operation was being performed by an independent contractor, whose employees, it is conceded, were not those of the Employer. On December 10, 1956, the Employer commenced to operate the mine with its own employees, transferring some of its mill employees to

the mine. Between December 13, 1956, and January 2, 1957, the Employer and the Intervenor were in negotiations for a new contract. One of the issues between these parties was whether or not the mine employees should be included in the same contract with mill employees, as requested by the Intervenor and resisted by the Employer. By January 2, 1957, a complete contract was agreed upon by the Employer and the Intervenor, including the request that the contract cover all production and maintenance employees at the mine and the mill. The contract, in its final typewritten form, was ready for signature on January 4, 1957. On that date, the membership of the Intervenor met and ratified the contract, which became effective retroactively as of December 16, 1956. On January 5, 1957, the Intervenor advised the Employer of the ratification and that the contract would be signed on January 22, 1957, because the Intervenor's field representative, who attended the negotiations and approved the terms of the contract on January 2, was away on business and would not return until January 22. The contract was signed on January 22, 1957. The Operating Engineer's petition was filed on January 16, 1957, and the Teamsters' petition on March 13, 1957. The Operating Engineers contends that its petition was timely filed with respect to the formal execution of the contract. Both the Operating Engineers and the Teamsters also contend that the contract is no bar because the Employer did not have a representative group of mine employees at the time the contract was signed.

We find no merit in the Operating Engineers' contention that the contract between the Employer and the Intervenor is no bar to an election herein because it had not been signed until after the filing of the petition. In applying its contract-bar rules, the Board is primarily concerned with whether the contract imparts to the relationship of the parties a degree of stability which outweighs the right of the employees to a redetermination of bargaining representatives at that particular time.[1] Although the Board generally requires that contracts, in order to constitute a bar, must be properly executed, the Board has held that in circumstances such as here, where certain substantive provisions have been placed in effect and where all that remained was the ministerial act of placing signatures upon the agreed document, the contract constitutes a bar from the date when the terms of the agreement were properly concluded. Thus, the terms of the contract were completely agreed upon by the parties on January 2, 1957, the employees ratified the agreement a few days later, and the wage and other provisions took effect on December 16, 1956, all prior to the filing of the petition by the Operating Engineers. In view of the foregoing, we do not believe that stability in labor relations would be served by a redetermination of bargaining representatives at this

[1] *Natona Mills, Inc.*, 112 NLRB 236, 239.

time.[2] Accordingly, we find that the current contract of the Employer and the Intervenor is a bar to the Operating Engineers' petition and we shall therefore dismiss the petition. For the reason stated below, we shall also dismiss the Teamsters' petition.[3]

[The Board dismissed the petitions.]

[2] *Mervin Wave Clip Company*, 114 NLRB 157; *Natona Mills, Inc., supra.* Cf. *Gibson Refrigerator Company, Division of Hupp Corporation*, 117 NLRB 561, wherein the Board held that a contract signed after the filing of a petition did not constitute a bar, as the terms of the agreement provided that it was not to take effect until 3 months after the parties agreed to the terms of the contract.

[3] We find no merit in the contention that the Employer did not have a representative group of employees in the mine operation on January 2, 1957, at the time the Employer and Intervenor agreed to the terms of the contract, as the record shows that as of December 13, 1956, there were 26 employees in 16 job classifications and that by April 4, 1957, the time of hearing when a full complement was reached, there were 49 employees in 23 job classifications. See *Cyclone Sales, Inc.*, 115 NLRB 431, footnote 1; *Decker Clothes, Inc.*, 83 NLRB 484.

The Electronics and Instrumentation Division of Baldwin-Lima-Hamilton Corporation *and* International Association of Machinists, AFL-CIO, Petitioner. *Case No. 1-RC-4857. July 31, 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 Thomas E. McDonald, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

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. 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 Petitioner seeks to represent a unit of machine shop employees at the Employer's Waltham, Massachusetts, plant. It is also willing to represent other employees in the plant whose skills duplicate those of machine shop employees. The Intervenor, International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, seeks to represent the machine shop employees as an appropriate departmental unit. The Employer