

[The Board directed that the Regional Director for the Twelfth Region shall, within ten (10) days from the date of issuance of this Direction, open and count the ballots of P. Colton and H. Sumner, management trainees, and the ballots of employees numbered 30 to 119 inclusive in the Regional Director's report on objections and serve upon the parties a revised tally of ballots.]

[The Board ordered that if, the Retail Clerks receives a majority of the valid votes cast in the election conducted in Case No. 12-RC-183, the Regional Director shall issue a certification of representatives. If the Retail Clerks does not receive a majority of the valid votes cast, the Regional Director shall issue a certification of results of election.]

[The Board further ordered the previous election conducted in Case No. 12-RC-184, set aside.]

[Text of Direction of Second Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Supplemental Decision, Direction, Order, and Direction of Second Election.

Tung-Sol Electric, Inc. and Triangle Radio Tube Corp. and International Union of Electrical Radio & Machine Workers, AFL-CIO, Petitioner. *Case No. 22-RC-6. June 26, 1958*

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 Aaron Weissman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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

¹ At the hearing, the Intervenor submitted a list of names of employees, attached to a statement which declared that they had never signed any authorization cards for the Petitioner and that if any cards with their signatures were submitted in support of the Petitioner's showing of interest, the cards were fraudulent. The record shows that the issue of fraud had been raised by the Intervenor and that the Regional Director had made a spot check, after which he was satisfied with the validity of the Petitioner's showing. The Hearing officer denied the introduction of the proposed list or any offer of proof based thereon, ruling that all such evidence must be submitted to the Regional Director. We agree with the hearing officer's ruling. The list which was offered in support of the Intervenor's contention of fraud is of insufficient probative value to cast doubt on the reliability of the showing. Moreover, a secret election, rather than a count of authorization cards, will determine the employees' choice of a representative. *The Babcock & Wilcox Company*, 116 NLRB 1542.

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 Petitioner and the Intervenor, Local No. 433, Independent, 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.

For many years, the Intervenor, which was affiliated with the United Electrical Workers (UE), had contractual relations with the Employer, the last contract expiring in May 1954. In February 1954, Local 433 disaffiliated from the UE and affiliated with The Playthings, Jewelry and Novelty Workers International Union, (CIO), which filed a petition for representation in March 1954. Thereafter, Local 433 disaffiliated from the CIO and became the present Intervenor, Local 433, Independent, and it filed a new petition in June 1954. Both petitions were thereafter consolidated,² and on September 29, 1954, the Board directed an election in which the Intervenor, the IUE, and the International Brotherhood of Electrical Workers (IBEW) participated. The election was inconclusive, and a runoff election was held on November 14, 1954, which the Intervenor won. The IUE filed timely objections to conduct affecting the election, and on April 1, 1955, following an investigation, the Regional Director issued his report on objections, in which he found that the objections did not raise substantial or material issues and recommended that the objections be dismissed and the Intervenor certified. Thereafter, the IUE filed exceptions to the Regional Director's report which the Board found were untimely under the Board's Rules and Regulations. The Board therefore adopted the Regional Director's report, and on May 3, 1955, issued a Supplemental Decision and Certification, certifying the Intervenor as the representative of the employees.³

On May 6, 1955, the IUE filed a motion requesting the Board to reconsider its action on the timeliness of its exceptions and to set aside or revoke the certification of the Intervenor. On June 13, 1955, the Employer and the Independent executed a complete collective-bargaining contract which was to be effective until May 15, 1957, and thereafter to continue for 1-year periods unless either party desired a change.⁴ The contract could be reopened for wages only in May

² Cases Nos 2-RC-6817 and 2-RC-6907.

³ 114 NLRB 104.

⁴ This contract covered the Newark, Bloomfield, and East Orange, New Jersey, plants of the Employer. Article XIV—Expirations and Renewals reads as follows:

This agreement shall be in effect from June 15, 1955 to May 15, 1957, between the Company and the Union and shall thereafter continue automatically for one (1) year periods unless either party desires a change.

In case either party desires a change at the end of the Contract period, written notice shall be given to the other party at least thirty (30) days prior to the expira-

1956.⁵ On September 16, 1955, the Board denied the IUE's motion for reconsideration and revocation of the Intervenor's certification.⁶ On May 15, 1956, the Employer and the Intervenor executed another complete collective-bargaining contract which is to expire May 15, 1959.⁷ On April 2, 1957, the IUE filed the instant petition. The Petitioner, IUE, urges that the May 15, 1956, contract is a premature extension of the 1955 contract and therefore does not bar an immediate election.

In support of its contention that the current contract is a bar, the Intervenor's main argument is that its certification year should begin not on May 3, 1955, but on September 16, 1955, when the Petitioner's motion for revocation was denied. In that 4-month period, the Intervenor urges, its certification was under a cloud, during which it was in no position to demand a fully considered contract. It was not possible under such circumstances to stabilize labor relations, as it could not foretell whether the motion would be granted. It was therefore obliged to execute a hurried agreement the following month in June 1955, which was not materially different from the contract which expired in 1954. It was not until after the Board denied the Petitioner's motion for reconsideration and revocation that Intervenor was able to enter into long and thorough discussions and negotiations resulting in the 1956 contract. For these reasons, the Intervenor contends that the 1956 contract was made during the effective certification period, and in accordance with well-established principles, such contract is not subject to challenge by a rival union.

The Employer generally agrees with the Intervenor. It emphasizes in addition that the hearing officer's ruling, excluding testimony concerning the background and circumstances surrounding the negotiations of the 1956 contract, constituted prejudicial error.⁸ Unless such

tion of this agreement and a conference shall be arranged within five (5) days upon receipt of said notice.

⁵ Article XII—Wage Reopening Clause.

Basic time work and piece work wages and inequities in the Wage Scale Classifications may be reopened by either party by giving notice to the other party one (1) week before May 15, 1956. No other provisions in this Contract shall be subject to change prior to May 15, 1957.

In the event no agreement is reached in regard to this Wage Reopening Clause, by May 30, 1956, the Union shall have the right to strike

⁶ 114 NLRB 104, *supra*.

⁷ In addition to covering the Employer's plants as indicated in footnote 4, *supra*, the 1956 contract also covered the Employer's Hillside, New Jersey, warehouse. Although the Hillside warehouse was not specifically mentioned in the 1955 contract, the Board's certification issued May 3, 1955, included these employees. The record shows that the Independent has represented the same employees in both contracts and that differences in wording did not affect the actual employees represented.

⁸ Although the hearing officer might have properly received the evidence concerning the circumstances of the negotiations of the May 15, 1956, contract and permitted the Board to determine the relevancy of such evidence, the opening statement of counsel for the Employer and the briefs of both Employer and Intervenor fully set forth the circumstances under which the contract was negotiated. These facts and arguments we have fully considered and we therefore find no prejudicial error was committed. Moreover, we have held that the element of good faith is not determinative in applying the premature extension rule. *Potash Company of America*, 113 NLRB 340.

circumstances are spread on the record, it contends, the Board cannot apply the premature extension doctrine, which is within the discretion of the Board.

We find no merit in these contentions. The fact remains that the parties were able to and did execute an agreement during the certification year. The argument that the 1955 agreement was hurried and reached under unusual circumstances is not supported in the record as the agreement provided for a 2-year term. The current contract was executed pursuant to the reopening clause of the earlier 1955 contract, which supports the conclusion that the parties themselves regarded that contract as binding in all respects and did not constitute a mere stop-gap arrangement pending decision on the motion to revoke. In any event, the parties had a reasonable opportunity to bargain during the certification year, and we find no circumstances which would warrant the Board in extending this protected period in which a certified union is not subject to challenge.⁹

The Intervenor cites the *Westinghouse* case¹⁰ in support of its contention that the premature extension doctrine does not apply to the facts of this case. We do not agree. In that case, the Board held that the contract opened pursuant to a broad reopening provision, permitting the union to strike in support of its demands and either party to terminate the agreement during the strike, unstabilized labor relations and that, during such reopened period, a rival petition would have been timely. Here, the contract was opened pursuant to a limited and narrow reopening provision and, unlike the contract in the *Westinghouse* case, did not contain the right to terminate during a strike. Therefore, during the period of negotiation, a rival petition would not have been timely. Accordingly, we find that the premature extension rule is applicable to the facts of this case, and that the 1956 contract was a premature extension which, if it were held a bar, would operate to foreclose the Petitioner of its right to challenge the incumbent Union's status for a period of 4 years from the date of certification. We therefore find that the current contract is not a bar to this proceeding.¹¹

4. The appropriate unit:

In accordance with the agreement of the parties we find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees employed by Tung-Sol Electric, Inc., at its plants located at 310 Sherman Avenue, Newark, New Jersey, 370 Orange Street, Newark, New Jersey; 95—8th Avenue, Newark, New Jersey; 200 Bloomfield Ave., Bloomfield, New Jersey;

⁹ *The Daily Press, Incorporated*, 112 NLRB 1434.

¹⁰ *Westinghouse Electric Corporation*, 116 NLRB 1574.

¹¹ *Armstrong Cork Company*, 117 NLRB 262.

Arlington Ave., East Orange, New Jersey, and at its warehouse located in the Evans Terminal Building, Hillside, New Jersey; also at the Triangle Radio Tubes, Inc., at Arlington Ave., East Orange, New Jersey, but excluding office clerical employees, plant clerical employees, professional employees, executives, technical employees, watchmen, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Sheet Metal Workers Union, Local No. 65, AFL-CIO and Inland Steel Products Company. *Case No. 8-CB-213. June 27, 1958*

DECISION AND ORDER

On December 30, 1957, Trial Examiner Louis Plost 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 take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the Charging Party filed a brief in support of the Intermediate Report.¹

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 [Members Rodgers, Bean, and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exception, briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.

1. We agree with the Trial Examiner that the Respondent violated Section 8 (b) (3) of the Act when its representative, Desch, refused on October 15, 1956, to sign the collective-bargaining contract whose terms had been finally agreed upon on September 11, 1956.

We see no reason to overrule the Trial Examiner's credibility findings. His extensive analysis of the testimony of the Company's and the Respondent's witnesses amply bears out his conclusion that the Respondent's negotiators acted as if they had full authority to reach and execute a binding agreement, and exercised their apparent authority during the 1956 bargaining in the manner displayed during

¹ As the record, exceptions, and briefs adequately present the issues and positions of the parties, the Respondent's request for oral argument is hereby denied.