Zangerle Peterson Co. *and* International Union, United Industrial Workers of America, Petitioner. *Case No. 13–RC–6346. May 5, 1959*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before R. H. Cowdrill, 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 employees of the Employer.[1]

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 Intervenor and the Employer are parties to a contract dated April 1, 1957, with a terminal date of April 1, 1959. In August 1957 this contract, in accord with a wage reopener clause contained therein, was amended by the parties, and the terminal date was extended to August 3, 1959. The original contract, and the amendment thereto, were countersigned by the International's president on August 27, 1957. The Employer and the Intervenor assert that the controlling terminal date is the one in the amended contract and that the present petition, which was filed on December 8, 1958, is thus premature. Petitioner argues that the August amendment was a premature extension, and that, therefore, the terminal date of the original contract being controlling, its petition is timely.

By their specific terms, neither the original contract nor the amendment, were to become effective until countersigned by a duly authorized officer of the International Union. At the time of the execution of the August 1957 amendment, this necessary signature had not yet been affixed to the original contract. We find, therefore, that the original contract was not fully executed within the meaning of *Appalachian Shale Products Co.*, 121 NLRB 1160, and thus would not have barred a petition when the August amendment was executed. In accord with the Board's contract-bar rule governing this situation, the August extension was, therefore, not a premature extension of the earlier contract, and the terminal date of the August 1957 amendment is therefore controlling for contract-bar purposes.[2] As the

[1] Furniture and Woodworkers Union, Local No. 1608, Upholsterers Union of North America, AFL–CIO, herein called the Intervenor, was permitted to intervene at the hearing on the basis of a current contractual interest.

[2] *Deluxe Metal Furniture Company*, 121 NLRB 995.

petition herein was filed more than 150 days before the August 3, 1959, terminal date of the contract, we therefore find that it was premature.

The foregoing contract also contains, in article II, various sections relating to maintenance of membership as a condition of employment, and to a voluntary checkoff. Among them are section 2, which requires, as a condition of employment after the statutory grace period, membership in good standing in the Intervenor in accordance with the Intervenor's constitution and bylaws; section 3, which, *inter alia*, obligates the Employer to discharge any employee who loses good standing by reason of nontender of dues or initiation fees; and section 7, which, *inter alia*, deems an employee to be a member of the Intervenor for all purposes if he tenders or pays his dues and initiation fees, and further provides that expulsion or termination of membership does not require the employee's discharge if he continues to tender or pay such financial obligations.

The validity of the foregoing clauses, and in consequence the validity of the contract for bar purposes, must be determined in the light of the policies established by the Board in its decision in the *Keystone* case.[3] The basic requirement of that case is that a union-security contract, to be a bar, must on its face conform to the requirements of the Act. As a guide to what the Board deemed to conform to the requirements of the Act, the Board included in that decision a model clause which, *inter alia*, permitted a requirement that employees become and remain members in good standing in the contracting union. Thus, if the contract here had given no greater specific protection to the employees than requiring that they be members in good standing in the Intervenor, it would in the light of the principles of the *Keystone* decision be deemed to conform to the requirements of the Act. In addition the contract here specifically limits the Intervenor's right to seek a discharge and the Employer's obligation to effectuate a discharge to those situations in which employees have failed to tender the financial obligations which may lawfully be required. Such provisions, in our view, conform to the requirements of the Act. The fact that the contract at one point makes reference to the Intervenor's constitution and bylaws does not defeat the validity of the contract where, as here, its conformity with the Act is evident when read, as it must be, in its entirety. The position of our dissenting colleagues that this single provision of the contract must be read without reference to any other provisions in the contract of which it is a part, we think, goes beyond the intent of the Board in the *Keystone* decision and is therefore untenable.

Nor can we agree that there is language in sections 3 and 6 of the contract which exceeds permissible limits. With respect to section 3,

[3] *Keystone Coat, Apron & Towel Supply Company, etc.*, 121 NLRB 880.

the quoted language clearly relates the employees' financial obligations to those that are within the scope of the Act, and therefore lawful. The facts that parties to a contract may, under the statute, require the tender of no more than dues and initiation fees as a condition of employment, and that reference in the quoted language to "other financial obligations coming within the scope of the National Labor Relations Act, as amended," may therefore be deemed surplusage, does not, contrary to the assumption of the dissent, convert language which is lawful on its face into a requirement which goes beyond the permissible limits of the Act. With respect to section 6, the Board has held [4] that "the question of conformity of a checkoff agreement with Section 302 in this respect involves the statutory standards applicable to the separate authorizations to be executed by the individual members," and consequently that "the absence in a contractual checkoff clause of a specific reference to the authorizations or the statutory requirements therefor does not by itself render the clause defective under our *Keystone* decision." [5] Moreover, section 4 of the contract, to which our colleagues do not refer, provides for a voluntary checkoff. It is manifest, therefore, and we find, that the provision in issue is applicable only if the voluntary checkoff has not been revoked.

We find, accordingly, that the foregoing union-security and checkoff provisions do not exceed permissible limits, and that the contract is therefore a bar. In view of the prematurity of the petition, as found above, and as this Decision is being issued more than 90 days before the terminal date of the contract, we shall dismiss the petition without prejudice to a timely refiling.[6]

[The Board dismissed the petition without prejudice to a timely refiling.]

MEMBERS RODGERS and JENKINS, dissenting:

We cannot agree with the majority that the union-security provisions of the contract between the parties do not exceed the permissible limits of the statute as delineated in Section 8(a)(3) of the Act, as amended.

In the *Keystone* decision,[7] which sets forth the revised rules with respect to union-security provisions for contract-bar purposes, the Board made it clear that a contract containing a union-security clause which does not on its face conform to the requirements of the Act will not bar an election. The Board pointed out that it adopted this rule

[4] *Wm. Wolf Bakery, Inc.*, 122 NLRB 630.

[5] See, also, *Stewart Die Casting Division*, 123 NLRB 447.

[6] *Deluxe Metal Furniture Company, supra.* In view of our decision herein, we find it unnecessary to consider the Employer's and Intervenor's posthearing motions to dismiss the petition on other grounds.

[7] *Supra.*

with the view in mind that, consistent with the statutory intent, it is not too much to expect parties who draft union-security provisions to adhere to the statutory requirements clearly set forth by Congress more than 11 years ago.

In the instant case, section 2 of the contract provides that "Every employee, now employed or who may hereafter be employed, upon completion of thirty (30) days of employment after the date of the execution of this Agreement, shall, as a condition of employment, become a member of the Union, and shall, as a continuing condition of employment, *maintain his or her membership in good standing in said Union in accordance with the Union's Constitution and by-laws.*" [Emphasis supplied.] This incorporation by reference to the Union's constitution and bylaws is, in our opinion, clearly contrary to the statutory proviso and to the rule set forth explicitly in the *Keystone* decision.

The term, "membership in good standing," is a traditional term in the field of labor relations. As the Board had occasion to comment in *Firestone Tire and Rubber Company*,[8] "the amended Act, with its amended provisos, does not change the type of membership permitted to make a condition of employment, although it permits a discharge for loss of 'membership' *only* when such membership is lost for failure to tender periodic dues or initiation fees." By anchoring the maintenance of membership in good standing "in accordance with the Union's Constitution and by-laws," the parties in the contract before us have imposed a condition of membership which sharply departs from the concept that membership in good standing is limited to the "tender of periodic dues or initiation fees." This provision flies in the face of the very purpose the *Keystone* decision sought to achieve—the adoption of a rule which "is simple, and will be clearly understood by all, including the worker in the plant as well as the attorney who specializes in labor law." Instead of requiring membership in good standing, i.e., the tender of periodic dues or initiation fees, as membership has been defined in *Firestone Tire and Rubber Company*, *supra*, the employees under this contract must look to the provisions of the Union's constitution and bylaws and maintain membership in accordance with the provisions of those documents—a requirement that is wholly alien to the statutory proviso and to the *Keystone* rule. To permit this departure—and substantial extension of union-security—is an impingement, in no uncertain terms, on the statutory intent and an extension of union-security far beyond the area contemplated by Congress in the amendments to the Act.

Not only section 2 of the contract but also section 3 departs from the permissible limits of union-security written into the Act by Con-

[8] 93 NLRB 981, at p. 983.

gress for that section provides that "Upon notification by the Union, the Company will discharge any employee who loses his good standing with the Union caused by non-tender of monthly Union Dues, Initiation Fees, *or other financial obligations coming within the scope of the National Labor Relations Act, as amended.*" Here, too, it is made apparent to the worker in the plant—for whose benefit the *Keystone* decision sought to clarify the requirements of union-security—that he must conform to some additional requirement other than the tender of periodic dues or initiation fees, a requirement that the Act did not impose. And in section 6 of the contract it is provided that "Employees who are members of the Union and transferred to excluded occupations as hereinabove set out in section 1 shall automatically be removed from the check-off list while they are so employed. *If, during the life of this Agreement, such employees are returned to their former occupations, they shall automatically be restored to the check-off list.*" It is patent from a reading of this provision that a union member who was transferred to an excluded occupation and gave up his union membership would be automatically restored to the checkoff list if he returned to his former occupation although he is not then a union member. Here we have still another instance of going beyond the maximum permissible limits for union-security written into the Act.

We are not impressed by the majority's complacency in reasoning that one might conceivably deduce through other provisions in the contract that when read "as an entirety" conformity with the Act was intended. In our judgment, the departures from the requirements of the Act are clear on the face of the contract, and we would so find.

We have already adverted to the objective of the Board in the *Keystone* decision to render the union-security requirements reasonably clear to the worker in the plant and not merely to the attorney who specializes in labor law. If this is what we intend to accomplish by our revision of the contract-bar rules in this area—and we are convinced we did—we submit that the majority's action in this case frustrates that very purpose. In *Keystone*, the Board referred specifically to the situation of those "Who, because of carelessness, ineptitude or oversight fail to make their union-security provisions comply with the law." The Board's explanation was clear:

> Although this latter situation could conceivably arise, we believe the answer is plain that the Board, as the agency of government charged with the interpretation and administration of the statute, cannot close its eyes to such failures, irrespective of the reasons.

For all of the foregoing reasons, we are obliged to dissent from the majority holding in this case.