

agents, officers, or representatives of Respondents,² or that it can be attributed to Respondents on any theory of ratification thereof.³ It accordingly follows that an element indispensable to our proceeding under Section 10(k) in this matter is lacking. In the circumstances, we are compelled to quash the notices of hearing issued in this proceeding.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, and on the entire record in these cases, the Board hereby orders that the notices of hearing heretofore issued in this proceeding be, and they hereby are, quashed.

² The self-declarations in this connection referred to above are manifestly not testimony as to probative evidence to the contrary. See *Bennet F. Schaufler v. Highway Truck Drivers & Helpers Local 107, et al. (Horn & Hardart)*, 230 F. 2d 7 (C.A. 3).

³ Unlike *Highway Truck Drivers & Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Horn & Hardart Baking Company)*, 115 NLRB 1184, wherein the circumstances warranted a finding that Local 107 had ratified, and therefore was responsible for, John Zoroiwchak's activity during a 1955 organizational campaign, the circumstances herein are not such as to warrant holding Local 107 accountable for Zoroiwchak's more recent conduct.

Southwestern Portland Cement Company and Davis W. Sellers,
Petitioner and International Union of Operating Engineers,
Local 605, AFL-CIO. Case No. 9-RD-235. March 3, 1960

DECISION AND ORDER

Upon a decertification petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Roderick C. Hunsaker, 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 Petitioner asserts that the Union, the currently recognized bargaining representative of the employees designated in the petition, is no longer the bargaining representative as defined in Section 9(a) of the Act.

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 Union, International Union of Operating Engineers, Local 605, AFL-CIO, an amalgamated local, assert their agreement of July 15, 1959, covering the employees sought herein, as

a bar to the present petition, which was filed on September 9, 1959, and moved to dismiss the petition. The Petitioner contends that the stated agreement is not a bar and, additionally, urges that a schism has occurred preventing the contract from barring this proceeding.

On June 13, 1957, the Employer and the Union entered into a contract covering the employees at the Employer's Fairborn, Ohio, plant, effective from June 1, 1957, to June 1, 1960. The agreement provides for modification or termination upon appropriate notice, and further provides "that either party could reopen the agreement for the purpose of negotiating only the hourly rates of pay."

On July 21, 1957, the parties executed a supplemental agreement amending the original contract with respect to wages and vacation benefits, and otherwise provided for the continuation of the original contract.

On August 6, 1958, the Employer and Union again executed a supplemental agreement, effective from June 1, 1958, which amended the prior agreements with respect to wages, seniority, and vacation benefits, but expressly provided for the continuation of the original contract of June 1, 1957, as amended.

On August 4, 1959, the parties executed a further supplemental agreement, effective from July 15, 1959, amending the original contract of June 1, 1957, as amended, with respect to wages, vacation, and health and welfare benefits. Additionally the bargaining unit was amended to include the classification of "Power Plant Helper." None of the supplemental agreements altered the term of the original contract and the last supplemental agreement provided that "said Agreements dated June 1, 1957, July 21, 1957, and June 1, 1958, shall remain in full force and effect and shall be binding upon the parties hereto except as herein amended and supplemented."

The Board has recently reexamined various aspects of its contract-bar policies for the purpose of achieving clarity and simplicity in this complicated field of Board law. As a result of its reexamination, the Board issued four lead cases,¹ which set forth certain major revisions and classifications in the rules relating to several significant phases of contract-bar policy.

In the *Pacific Coast* decision, the Board decided that a valid contract having a fixed term or duration shall constitute a bar for as much of its term as does not exceed 2 years, and that any contract having a fixed term in excess of 2 years shall be treated, for the purposes of contract bar, as a contract for a fixed term of 2 years, notwithstanding the fact that a substantial part of the industry of which the contracting employer is a part may be covered by contracts for a longer

¹ *Keystone Coat, Apron & Towel Supply Company, et al.*, 121 NLRB 880; *Hershey Chocolate Corporation*, 121 NLRB 901; *Deluxe Metal Furniture Company*, 121 NLRB 995; and *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990.

term. The Board also decided that a contract of more than 2 years' duration will be treated as a contract for a fixed term of 2 years for the purpose of applying the rules relating to prematurely extended contracts and the timeliness of petitions. Thus, to be timely in relation to such a contract, a petition must be filed from 150 to 60 days before the end of the first 2 years of the contract term, or after the expiration of this 2-year period. Moreover, extensions of such contracts, during or after the 60-day period, at the end of the first 2 years' duration will not be considered premature extensions.

The question that arises in the instant case is what impact these rules have on situations where, after the first 2 years of a long-term contract, the parties amend that contract and no petition has been filed in the interval between the end of the first 2 years and the amendment. As is apparent from the above statement of the rules with respect to long-term contracts, a *new* agreement executed after the end of the first 2 years, in the absence of a prior petition timely filed, is effective as a bar for as much of its term as does not exceed 2 years. Under these rules, as contracts of unreasonable duration are treated as if they were contracts for 2 years, the timeliness of petitions can be readily determined and, at the expiration of the first 2 years, the parties are in no different position from the one they would have been in if they had executed a 2-year contract in the first instance. To assure that this element of ready predictability is maintained in all circumstances, we feel that *amendments* of long-term agreements executed after the first 2 years should, as in the case of new agreements, indicate a clear intent on the part of the contracting parties, in writing, to be bound for a specific period.

Consistent with this policy enunciated in the *Pacific Coast* decision, we restate the rule as follows: where, after the end of the first 2 years of a long-term contract and before the filing of a petition, the parties execute (1) a new agreement which embodies new terms and conditions, or incorporates by reference the terms and conditions of the long-term contract, or (2) a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period, such new agreement or amendment shall be effective as a contract bar for as much of its term as does not exceed 2 years. Any new agreement or amendment executed prior to the 60-day period at the end of the first 2 years of a long-term contract, however, is subject to the premature extension doctrine.

As noted above, the evidence in this proceeding shows that, after the end of the first 2 years of the contract and before the filing of the petition, the contracting parties executed an amendment which expressly reaffirmed the original agreement and clearly indicated an intent on the part of the parties to be bound for a specific period.

Under these circumstances, and as the petition was filed after the 1959 amendments to the contract were executed, we find that the amended contract constitutes a bar to this proceeding.

The Board has also accorded consideration to the schism issue raised by the Petitioner at the hearing. The Petitioner alleges in this connection that the employees at the Employers' Fairborn plant have not availed themselves of the opportunities for participation in the amalgamated union, and that the appointment of committee men and shop stewards by the Union, rather than their election, was improper. We find no merit in these contentions.

In the *Hershey* case, *supra*, the Board reexamined and restated its schism doctrine, holding that it would find a schism to exist, warranting an election in the face of a contract otherwise a bar, if, and only if, there existed, *inter alia*, a basic intraunion conflict affecting the employees' representative. The Petitioner in the instant case does not allege, nor does the record reflect, that the union members took any action whatsoever to disaffiliate from the Union, or even indicated an intention to do so. At most, the Petitioner's allegations amount to mere individual dissatisfaction with the collecting bargaining apparatus, and afford no basis for finding a schism.

Accordingly, as the existing contract is a bar to this proceeding, we shall dismiss the petition without prejudice to a timely refile.

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

Mirro Aluminum Company and District 50, United Mine Workers of America, Petitioner. *Case No. 13-RC-6851. March 3, 1960*

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 Karl W. Grabemann, 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 Bean and Fanning].

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 herein claim to represent certain employees of the Employer.¹

¹ At the hearing, Locals 120 and 130, Aluminum Workers International Union, AFL-CIO, herein called the Intervenor, Lodge 516 and Lodge 1181, International Association of 126 NLRB No. 121.