

All security guards employed at the Employer's Medina facility, San Antonio, Texas, excluding guard lieutenants, all other employees, and supervisors as defined in the Act.⁴

[Text of Direction of Election omitted from publication.]

⁴ The parties, who are in basic agreement as to the appropriate unit, stipulated at the hearing that guard lieutenants are supervisors within the meaning of the Act and should be excluded from the unit.

Weyerhaeuser Company and General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind., Petitioner. *Case No. 15-RC-2654. May 20, 1963*

DECISION ON REVIEW AND ORDER

On January 28, 1963, the Regional Director for the Fifteenth Region issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the Employer and the Intervenor,¹ in accordance with Section 102.67 of the Board's Rules and Regulations, as amended, filed with the Board timely requests for review on the ground, *inter alia*, that the Regional Director erroneously found the existing contract between the Employer and the Intervenor not to constitute a bar to the petition.² By telegraphic order dated March 1, 1963, the Board granted the requests for review, and stayed the election. Thereafter, the Employer and the Intervenor filed briefs. American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed an *amicus* brief.

The Board³ has considered the entire record in the case with respect to the Regional Director's determination under review, and makes the following findings:

The Employer and the Intervenor urge, as a bar to the petition herein, their contract executed on March 27, 1961, which was to be effective retroactively from January 19, 1961, for a period of 2 years. They contend that the petition, filed on December 5, 1962, during the insulated period of the agreement, was untimely and should be dismissed. The Regional Director found that the contract contained

¹ International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO

² The Employer, as an additional ground for review, alleged that the delegation of authority is unconstitutional and that Section 3(b) of the Act and the Board's Rules and Regulations are in conflict with the Administrative Procedures Act. For the reasons stated in *Wallace Shops, Inc.*, 133 NLRB 36, we agree with the Regional Director that these contentions lack merit.

³ 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, Fanning, and Brown].

a union-security clause which was "incapable of a lawful interpretation" and removed the agreement as a bar, under the Board's holding in the *Paragon* case.⁴ As the basis for his determination, the Regional Director found that the agreement, because of its retroactivity, failed to accord new employees hired between January 19, 1961, its effective date, and March 27, 1961, its execution date, the required 30-day statutory grace period.

Section III of the contract reads, in pertinent part, as follows:

Coverage:

1. Membership in Local Union #567 as a condition of employment shall be required of all employees of the Company within the coverage of this agreement on and after the 31st day following the beginning of such employment or the effective date of this agreement, whichever is later.

We find merit in the positions of the Employer and the Intervenor. The record clearly shows a continuous history of collective bargaining between the Intervenor and the Crescent Paper Box Factory, Inc., the Employer's predecessor (herein called Crescent), from 1947 until January 1961, at which time the Employer purchased Crescent's assets, assumed the existing collective-bargaining contract, which was from January 21, 1959, to January 21, 1962, and continued to operate the existing plant. In December 1960, pursuant to the wage-reopener clause of the contract, the Intervenor gave Crescent timely notice of its desire to negotiate certain changes therein. However, due to the transfer of ownership, negotiations were delayed and no agreement was reached until March 27, 1961, when the Intervenor and the Employer executed the contract, retroactive to January 19, 1961, and urged as a bar herein.

The Regional Director relied on *Standard Molding Corporation*, 137 NLRB 1515, to find that the contract asserted as a bar did not bar this petition. That case is clearly distinguishable. There too the contract asserted as a bar had been executed retroactively, although the significant point is that the retroactive period was one in which no contract had been in effect. Here, because the terms of the contracts overlapped, coverage under legal union-security clauses was continuous, and it cannot be said that the current contract specifically withholds from incumbent nonmembers and/or new employees the statutory 30-day grace period. Accordingly, contrary to the Regional Director, we find that the contract can be legally interpreted, and that it therefore bars the petition, which we hereby dismiss.

[The Board dismissed the petition.]

⁴ *Paragon Products Corporation*, 134 NLRB 662.