Eastwood Nealley Company[1] ***and*** **Robert Hearn and Edward Worley** ***and*** **Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**[2] Case 22–RD–233

February 1, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND ZAGORIA

Upon a decertification petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer James F. Brady. The Joint-Petitioners and the Union filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Joint-Petitioners, employees of the Employer, assert that the Union, which is the currently recognized bargaining representative of the employees involved herein, is no longer their representative as defined in Section 9(a) of the Act.

3. The Joint-Petitioners seek a decertification election in a unit of the Employer's wire weavers and apprentices at its Belleville, New Jersey, plant. The Union and the Employer contend that a memorandum of agreement, handwritten notes, and their former contract, taken together, constitute a contract which bars a present determination of representatives. We find no merit in this contention.

The Employer and Union entered into a contract covering the employees involved herein, effective September 23, 1964. By its termination clause, it was to remain in effect until September 23, 1967, and "continue in full force and effect from year to year thereafter unless written notice . . . of a desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to date of expiration."

On June 12, 1967, the Union wrote the Employer stating that it wished "to sit down with the Company in view of amending the contract . . . expiring on September 23, 1967." Thereafter, the parties engaged in negotiations, which concluded at 4 a.m. on September 23. The Union submitted into evidence signed handwritten notes of these sessions. Later in the day of September 23, the Union held a meeting at which the Employer's contract proposals were read to the employees, who voted to request the Employer to negotiate further. Subsequently, the Union requested the Employer to reopen negotiations, but the Employer replied that it had made its final offer.

On September 26, 1967, the parties signed a memorandum of agreement, and the next day the Joint-Petitioners filed their petition herein.

The memorandum of agreement does not on its face expressly reaffirm or incorporate by reference the handwritten notes of September 23 or the 1964–67 contract, or any portions thereof. It, therefore, cannot be considered as a part of any overall collective-bargaining agreement incorporating the three documents.[3] Moreover, the memorandum does not on its face purport to be, and there is no contention that it is, in itself, a complete contract, and it contains no expiration date.[4] It, therefore, can not by itself constitute a bar to the petition.

With respect to the handwritten notes, we find that these notes, independently or in conjunction with the other documents, may not serve as a bar. Although the notes contain an expiration date, signatures of the negotiators, and a statement that they represent changes in the former contract, their provisions are unintelligible, and we are therefore unable to determine in what manner the former contract was changed, and what terms and conditions of employment were agreed to. For instance, although the notes contain the phrases "disciplinary procedure" and "severance pay," they do not contain any terms relating to such procedure or pay; and although they contain figures which seem to represent wage rates, we are unable to determine which of several different figures represent the parties' final agreement. Appearing randomly in the notes are symbols, phrases, and crossed-out words. Although the initials of the negotiators appear in several places, it is impossible to determine to what, if any, specific term the initials indicate agreement. Accordingly, we are unable to find that the handwritten notes, together with the old contract, contain sufficiently specific terms and conditions of employment to constitute a bar.[5] As the notes alone do not purport to be a complete collective-bargain-

[1] The name of the Employer appears as amended at the hearing.

[2] Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Union, was permitted to intervene on the basis of its contract interest in the employees involved.

[3] See *Victor Manufacturing & Gasket Company*, 133 NLRB 1283.

[4] *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990, 993.

[5] *Appalachian Shale Products Co.*, 121 NLRB 1160.

ing agreement, they cannot independently constitute a contract bar.

As the petition was filed after the expiration of the 1964–67 contract, that contract, alone, cannot serve as a bar. We, therefore, find that the former contract, handwritten notes, and memorandum, considered together or separately, do not constitute a bar to the decertification petition.[6]

Accordingly, we find that 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 parties stipulated, and we find, that the following employees constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All wire weavers and apprentices, excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act and all other employees.

[Direction of Election[7] omitted from publication.]

[6] In view of this finding, it is unnecessary to make any determination regarding the additional reasons asserted by the Joint-Petitioners for not finding a contract bar in this case

[7] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 22 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236