

**West India Manufacturing & Service Co., Inc. and Union Nacional de Trabajadores de Construccion, Produccion, Servicio y Ventas, Petitioner. Case 24-RC-4496**

March 31, 1972

### DECISION AND ORDER

CHAIRMAN MILLER AND MEMBERS FANNING,  
JENKINS, AND KENNEDY

Upon a petition duly filed on November 1, 1971, a hearing was held before Hearing Officer Luis A. St. Bernard on December 9, 1971. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, this case was transferred by the Regional Director for Region 24 to the Board for decision. Thereafter, briefs were duly filed by the Employer and the Intervenor.<sup>1</sup>

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 Employer's and Intervenor's briefs, the Board finds:

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

2. The Petitioner and the Intervenor are labor organizations claiming to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Intervenor and the Employer have had a bargaining history which dates from 1944. Their most recent collective-bargaining contract was to expire on October 31, 1971. Prior to that contract's expiration, the parties began negotiating for a new contract at a time not specified in the record. On August 15, 1971, President Nixon announced that for a 90-day period commencing the following day and ending on November 13, 1971, all wages and prices were to be frozen. Although the parties bargained during that time prior to their contract's expiration, both the Employer and the Intervenor contend that no new agreement was reached: (1) because of the general uncertainties the freeze period created regarding economic matters and (2) because of the particular uncertainties whether the guidelines that were to follow would, in fact, apply to

the Commonwealth of Puerto Rico.<sup>2</sup> Because of these alleged uncertainties, the Employer and Intervenor, on October 29, 1971, executed an extension agreement extending their original contract until December 1, 1971. Thereafter, on November 1, 1971, the day after the original contract expired, the Petitioner filed its petition. On November 29, 1971, the Employer and the Intervenor again extended their contract until January 15, 1972.

The Employer and the Intervenor both contend that but for the freeze which was announced on August 15, 1971, the parties would have reached agreement on a new contract and thus continued a contractual history which dates from 1944. In effect, they argue that they did not have the benefits of the 60-day insulated period the Board affords parties to a contract since the 60 days prior to their contract's expiration were within the freeze period. At the hearing, the Petitioner contended: (1) that the freeze period did not prohibit negotiations for a new contract and (2) that the Intervenor's constitution precluded the Intervenor from entering into the extension agreements of October 29 and November 29 since these agreements had not been ratified by its members.

For the reasons that follow, we dismiss the petition herein. We also give to the Employer and the Intervenor 60 days in which to bargain, free from the filing of any petitions, and we extend this time from the date our decision herein issues.

By the rules of contract bar which have evolved over the years, the Board has tried to harmonize two sometimes conflicting concepts—that of industrial stability as represented by the existing contract and that of the employees' right to select or change their bargaining representative. One of the paramount rules the Board has set out is that a petition which is filed during the last 60 days of a valid contract will be considered untimely and will be dismissed.<sup>3</sup> Thus, during this 60-day "insulated" period, the parties to the existing contract are to be free to execute a new or amended agreement without the intrusion of a rival petition, but if no agreement is reached or if the agreement which is reached does not constitute a bar, itself, then a petition filed after the expiration of the old, valid contract will be timely and will be entertained.

Under such rules, we would ordinarily find that the extension agreement of the Employer and the Intervenor signed on October 29, 1971, was not a bar and we would entertain the petition. But the circumstances which precipitated that agreement persuade us that the ordinary rules of contract bar are not here applicable since we are convinced that the parties were not

<sup>1</sup> At the hearing, Union de Empleados de Muelles de Puerto Rico (Local 1901-ILA-AFL-CIO) was permitted to intervene on the basis of its collective-bargaining agreement with the Employer covering the employees involved herein.

<sup>2</sup> We note that on the day following the hearing in this matter, the Cost of Living Council excluded Puerto Rico from these Phase II guidelines.

<sup>3</sup> *Deluxe Metal Furniture Company*, 121 NLRB 995.

afforded an actual 60-day insulated period in which they were free to bargain before their contract expired on October 31, 1971.

The insulated period with regard to their contract ran from September 2 to October 31, 1971. However, prior to that time on August 15, 1971, as implemented by Executive Order No. 11615, President Nixon announced that wages and prices were to be frozen for a 90-day period, commencing on that date and ending November 13, 1971. The Executive Order was issued before the insulated period of the contract involved here began and, though that order did not preclude collective bargaining as such, it did create serious impediments to the resolution of differences especially insofar as increased economic benefits were to be sought by the Intervenor. It is clear that during the freeze period there was much uncertainty among employers, unions, and Government officials as to what limitations and/or restrictions, if any, on wages would finally be specified at the end of the freeze. What was certain was that whatever wage increases the parties might agree to in the freeze period, such were to be subject to the then unknown guidelines which were to follow the freeze's end.<sup>4</sup> In such a situation, the practical result was that the parties were unable to bargain intelligently during all of their insulated period and

hence were effectively deprived of this period. It is for this reason that we dismiss the petition herein.

As we have noted, under our ordinary rules of contract bar, the petition filed herein would be considered timely. However, our rules are not so inflexible as to exclude deviation in situations where unusual circumstances compel a different result.<sup>5</sup> Were we to process a petition such as the one herein, we would, in effect, be carrying out our function of administering the Act in myopic disregard of the situation as it really existed for parties attempting to negotiate new contracts during the freeze. This we will not do. Rather, our decision herein reflects our longstanding policy of taking into account other instruments of national labor policy in suitable situations and this we deem such a situation.<sup>6</sup>

Since the parties did not have an effective 60-day period in which to bargain prior to the expiration of the contract, we will give them a full 60 days from the date of our decision herein to bargain, free from the filing of any petitions, and we will extend that time from the date our decision herein issues.<sup>7</sup>

#### ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

<sup>4</sup> We note that during the freeze, on September 14, 1971, Secretary of Labor Hodgson, who was also a member of the Cost of Living Council, stated that the parties could bargain during the freeze but that if they did so "they should be advised that subsequent revisions of these terms may be needed depending on what policies will prevail following the 90-day freeze. The policies have not been determined at this time." U.S. Dept. of Labor News Release—U.S. DL-71497. The initial guidelines did not follow until shortly before the freeze was lifted.

<sup>5</sup> See, e.g., *Allis-Chalmers Manufacturing Company*, 50 NLRB 306 (1943); *Aerojet-General Corporation*, 144 NLRB 368 (1963).

<sup>6</sup> See *Aerojet-General Corporation*, *supra* at 371, fn. 6, for illustrations.

<sup>7</sup> Once the petition was filed, the parties herein could continue bargaining only at the risk of a possible unfair labor practice charge being filed. *Shea Chemical Corporation*, 121 NLRB 1027. In light of our approach to this case, we find it of no significance that the extension agreements of October 29 and November 29, 1971, were not ratified by the Intervenor's members.