Hill & Sanders-Wheaton, Inc. *and* Raymond C. Wolford, Petitioner. Case 5–RD–397

March 31, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING, JENKINS, AND KENNEDY

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 William I. Shooer at Washington, D.C. Following the hearing and pursuant to Section 102.67 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 5 transferred this case to the Board for decision. None of the parties filed a brief.

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, 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 asserts that the Intervenor,[1] which is the currently recognized bargaining representative of the employees involved herein, is no longer the representative as defined in Section 9(a) of the Act.

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 was certified as the collective-bargaining representative of the employees herein on August 22, 1969.[2] As a result of negotiations, a contract was signed by the Employer and the Intervenor on September 2, 1969, which was retroactive to August 13, 1969. This contract had an expiration date of August 11, 1971.

Pursuant to the provisions of the contract, the Intervenor sent a timely notice to terminate this contract prior to the 60th day before the contract was to expire, and thereafter negotiations were carried on by the parties between the time the notice was sent and the contract's expiration date. As a result of the parties' inability to reach a new contract agreement, the Intervenor went on strike on August 12, 1971, the day after the contract expired.

Subsequently, on August 15, 1971, as authorized by Congress[3] and 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. As a result of this announcement, the Federal mediator who had entered the contract negotiations on August 11 contacted the Intervenor's agent and asked about the employees returning to work. The mediator then arranged a meeting attended by the parties and himself. As a result of this meeting, held on August 16, 1971, the parties and the mediator signed an agreement, on that date, which reinstated all the terms and conditions of the old contract. This agreement was to remain in effect "until November 27 or such further time as the President's 'Wage-Price freeze' declared August 15, 1971 is rescinded."[4] Thereafter, on August 17, 1971, the strike ended and the employees returned to work. There is no indication in the record whether the parties tried to negotiate during the freeze but no new agreement had been reached when the instant petition was filed on September 30, 1971.[5]

The Intervenor contended at the hearing that the extension agreement signed August 16, 1971, acted as a bar to the decertification petition since the petition was not filed at least 60 days prior to the expiration of the agreement, which it stated was November 27, 1971. It thus entered a motion to dismiss this petition. The Petitioner and the Employer argued that an agreement such as the August 16 agreement is an interim agreement and not a bar and since the petition was filed after the expiration date of the original agreement, it is timely.

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.[6] Thus during this 60-day "insulated" period, the parties to the existing contract are 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 entertained.

[1] Automotive Lodge 1486 District Lodge No. 67, International Association of Machinists and Aerospace Workers, AFL–CIO.

[2] Case 5–RC–6800, not published in Board volumes.

[3] Economic Stabilization Act of 1970 (P.L. 91-379, 84 Stat. 799), as amended.

[4] The Intervenor's agent said he felt that as a result of the President's announcement the Intervenor could not secure any wage gains for the employees and hence it signed the agreement.

[5] A few days after the President's announcement, the Office of Emergency Preparedness, which was to monitor wages and prices during the freeze, issued a series of questions and answers concerning the effects of the freeze. According to the OEP, parties were free to bargain during the freeze and to sign contracts but the implementation of any wage increases these contracts might bring had to await the lifting of the freeze.

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

Under such rules, we would ordinarily find that the August 16, 1971, agreement entered into by the Employer and the Intervenor herein was not a bar since it was a contract of indefinite duration and we would entertain the petition.[7] But the announcement of the wage-price freeze had such an extraordinary impact upon the normal course of collective bargaining between these parties that we are, in this case, persuaded that the ordinary rules of contract bar are inapplicable and hence we dismiss the petition.

The petition was filed during a time when the Intervenor was voluntarily complying with the announced Federal policy of the time—i.e., refraining from striking.[8] The Board in an analogous situation, in *Aerojet-General Corporation,*[9] refused to entertain an otherwise timely petition, filed at a time when the union there was voluntarily refraining from striking at the behest of Federal officials while continuing to bargain, and we find the rationale of that case persuasive here.

In relevant part, the facts in *Aerojet* reveal that the parties began negotiations before their existing contract expired and continued bargaining thereafter. On the day the contract was to expire, the parties entered into an agreement continuing that old contract on a day-to-day basis subject to 24-hour notice of termination. Since the negotiations involved an employer who was doing work in the space and missile field, the President of the United States intervened in the negotiations to request the union not to strike and the union agreed to hold off striking for a period of 60 days. At the end of this period, when no agreement had been settled upon, the union struck. But the Secretary of Labor asked the union to call off its strike. The union did so and negotiations continued. While negotiations were then in progress, a petition was filed by another union seeking an election among a group of employees represented by the bargaining union. Shortly thereafter, the bargaining union and the employer signed an agreement.

In such a situation, the Board dismissed the petition, despite that fact that there no written contract had been finally agreed upon at the time the petition was filed. In doing so, the Board stated that it did not regard its contract-bar rules as so inflexible as to exclude deviations in situations where unusual circumstances compelled a different result. Commenting further, the Board noted that though the administration of the National Labor Relations Act is an important element of the country's national labor policy it is not the only instrument of this policy, and, therefore, in appropriate situations, the Board had taken into account, and sought to accommodate its proceedings to, other instruments of the national labor policy.[10] Deciding that the situation in *Aerojet* was just such a situation, the Board refused to entertain the petition since, the Board felt, to hold an election would be to act at cross-purposes with the Government-sponsored procedures which were set up to and did maintain industrial peace in the defense industry involved. Further, to hold an election would penalize the union for cooperating with the requests of the President and Secretary of Labor to surrender its rights to strike and might discourage unions from acceding to future Presidential requests to forego strike action. The Board noted that if the union had not agreed not to strike it could have been in a position to bring full economic pressure to bear on the employer in support of its bargaining demands and this quite possibly could have hastened a favorable settlement before the petition was filed. The Board then significantly stated that "it may also well be, for all we know, that the union might thereby have left itself less vulnerable to those employee dissatisfactions which led to defections to the rival union and the filing of the petition."[11]

In the present case, the Intervenor was on strike and at the request of the Federal mediator and in conformity with the Federal policy during the freeze returned from strike status and continued to refrain from striking during the course of the freeze. As in *Aerojet,* the Intervenor acceded to the governmental policies, forebore to strike and thereby forfeited such chance as it had to negotiate and sign a contract before the instant petition was filed.[12]

We have decided further that we will allow the Employer and the Intervenor another 60-day period in which to bargain free from the possibility of any rival petitions. Since the parties could not bargain even when the freeze ended because of the instant petition[13] we shall give the parties that 60-day period from the date of our decision herein dismissing the petition issues.

[7] Cf. *Frye & Smith, Ltd.,* 151 NLRB 49, 50.

[8] On August 17, 1971, the Federal Mediation and Conciliation Service director requested voluntary compliance in ending all labor disputes including strikes and lockouts, during the freeze period. The director commented that strikes at this time would be unstabilizing and expressed the opinion that they might possibly be illegal under the Economic Stabilization Act.

[9] 144 NLRB 368 (1963).

[10] See 144 NLRB 368 at 371, fn. 6, for cases cited therein.

[11] 144 NLRB 368 at 372.

[12] We find no significance in the fact that, as opposed to the union's forebearance from striking in *Aerojet* which was done under no threat of illegality if it did strike, in the instant case striking might have been considered illegal. The statement with regard to illegality was only an opinion expressed by one public official which in fact did not become the Federal policy. The key is that in both cases there was voluntary compliance with Federal policy by the unions in both cases and urgings of Federal officials to do so in both cases. We also attach no importance to the fact that negotiations continued in *Aerojet* while herein, although the record is not clear, it appears that no negotiations took place during the freeze. While the negotiations could have continued during the freeze period, it is clear that the parties were uncertain as to what limitations and/or restrictions, if any, on wage and fringe benefits would finally be specified at the freeze's end.

[13] *Shea Chemical Corporation,* 121 NLRB 1027.

ORDER

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

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