

The Bendix Corporation, Process Instruments Division and Joyce Y. McGee and Nelva Jean Johnson, Petitioners and Laborers International Union of North America, Local No. 1304, AFL-CIO. Case 9-RD-633

May 29, 1974

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

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 R. Schwartz at Lewisburg, West Virginia. 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 Acting Regional Director for Region 9 transferred this case to the Board for decision. The 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 authority in this proceeding 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, 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 Petitioners, employees of the Employer, assert that the Union, which is the currently recognized bargaining representative of the employees involved herein, is no longer a 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.

On January 30, 1971, the Employer and Union entered into a 3-year collective-bargaining agreement expiring on January 29, 1974. A representative of the Union contacted the Employer for the purpose of commencing negotiations on a new contract, and negotiating meetings subsequently began on December 18, 1973. Several items in the old contract were left unchanged and did not require further negotiations. In order to reflect these initial understandings of the Employer and the Union's duly designated

negotiating committee, P. L. Morgan, director of industrial relations for the Employer, and Lyle Kirker, business manager of the Union, initialled on January 10, 1974, a copy of the expiring contract adding the letters "T.A.T." (Tentatively Agreed To) and struck lines through those clauses of the old agreement subject to negotiations. Additionally, on January 10 the parties agreed on nine items (including layoffs, leaves of absence, service with the volunteer fire department, letters of understanding, shift preference, transfers to and from the bargaining unit, and holiday pay) over which negotiations had been held, and these, too, upon reduction to writing, were each initialled by Morgan and Kirker along with "T.A.T." leaving only the issues of wages and other economic benefits yet to be settled. On January 17, 1974, the Union's membership ratified the new collective-bargaining agreement as to all terms and conditions except wages.

Negotiations continued, and on January 29, 1974, the Employer and the negotiating committee reached agreement regarding the remaining terms and conditions of the collective-bargaining agreement, but a membership vote that day failed to approve these remaining items. The employees struck for 2 days, but on February 1, 1974, at a membership meeting they voted to ratify the same wage package together with all that had been ratified at the January 17 meeting.

On February 4, 1974, the same day in which the decertification petition in the case herein was filed, the Employer, by its duly designated representative, and the Union, by the individual members of the negotiating committee, signed a "Letter of Agreement." There is no contention and no evidence that either the Union or the Employer was aware of the petition and/or its filing at the time the "Letter of Agreement" was signed.¹ The "Letter of Agreement," dated February 4, 1974, fully identifies the parties and notes that an agreement had been reached on February 1, 1974. The document then set forth in pertinent part:

The Agreement shall be effective until midnight, January 31, 1977, and shall be fully documented in full particular for signature by the parties; and shall include the following general provisions.

A) Language on general terms and conditions as agreed between the parties and as stated in their accepted terms in negotiation.

The remainder of the "Agreement," appearing under subparagraph "E," specifically details the economic

has not been informed at the time of the execution that a petition has been filed *Deluxe Metal Furniture Company*, 121 NLRB 995, 999.

¹ Where a contract, which otherwise would constitute a bar, is executed the same day a decertification petition has been filed, said contract will bar an election if it is effective immediately or retroactively and the employer

terms agreed upon at the January 29 negotiating session and ratified at the February 1 membership meeting including the pension plan, insurance benefits, additional holidays, job classification progressions, and wage rates.

For subparagraph "A" to have any meaning whatsoever, it is subject to but one interpretation; i.e., that it incorporates by reference the initialled expired contract as well as the other initialled terms and conditions set forth in separate writings. Thus, in evaluating the contents of subparagraphs "A" and "B" along with the pertinent dates and signatures, the "Letter of Agreement" Constitutes an appropriate informal document containing substantial terms and conditions of employment sufficient in detail to serve as a contract bar to a decertification petition.²

The coexistence of the initialled documents embodying the terms and conditions ratified on January 17, 1974, with the February 4 "Letter of Agreement," assured the requisite industrial stability which is achieved only where a "contract undertakes to chart with adequate precision the course of the bargaining relationship and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems."³ Accordingly, we find that the petition for decertification is barred by an effective collective-bargaining agreement.

ORDER

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

² See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162

³ *Ibid* at 1163.