

River Forest Golden Bear Joint Venture, Employer-Petitioner and Chicago Joint Executive Board of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO and its affiliated Union, Hotel, Motel, Club, Cafeteria, Restaurant Employees and Bartenders International Union, AFL-CIO, Local 450. Case 13-RM-1151

June 30, 1975

DECISION ON REVIEW AND
DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

On January 14, 1975, the Regional Director for Region 13 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Employer's petition as untimely filed. Thereafter, the Employer, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, filed a timely request for review of the Regional Director's decision, contending, *inter alia*, that the Regional Director's decision raises substantial questions of law and policy because it departs from officially reported precedent. The Union filed a brief in opposition to the request for review.

On March 4, 1975, the National Labor Relations Board, by telegraphic order, granted the request for review. The Employer filed a brief on review.

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 considered the entire record in this case with respect to the issues under review, including the brief on review, and makes the following findings:

On May 30, 1972, the Employer and the Union executed a contract, effective until November 30, 1974, which provided, *inter alia*, that, absent written notice of termination given not more than 90 days nor less than 60 days prior to November 30, 1974, or any anniversary date thereof, the contract would be automatically renewed. No party to the contract filed such notice of termination. However, on October 1, 1974, the Employer filed the instant petition.

The Regional Director dismissed the petition. He concluded that since notice of termination was not

given the contract was automatically renewed and, therefore, barred the petition. The Employer contends that the petition was filed 61 days prior to the terminal date of the contract and was therefore timely under the *Deluxe Metal Furniture*¹ rule, as modified in *Leonard Wholesale Meats*.² We find merit in the Employer's contention.

In *Deluxe Metal Furniture*, we held that a petition is timely filed if it is filed not more than 150 days nor less than 60 days prior to the terminal date of a contract. In *Leonard Wholesale Meats*, we modified that holding by shortening the period of timely filing to not more than 90 days nor less than 60 days prior to the terminal date. The petition here was, therefore, timely filed under *Leonard*.

*Montgomery Ward & Co.*³ and *Absorbent Cotton & Co.*,⁴ cited by the Regional Director, involved facts significantly different from those in the instant case, and do not require a different result. Neither case involved a petition timely filed during the open period of a contract,⁵ nor did they involve the effect of an automatic renewal clause on the timeliness of a petition. Moreover, in neither case did we hold that a petition filed during the open period of a contract would be untimely if filed by a party to the contract. To the contrary, in *Montgomery Ward*, we held that: "absent a conflicting timely claim by a rival union, a petition by either of such parties to a contract is timely only when filed at the proper time with respect to the contract's expiration date,"⁶ citing *Deluxe Metal* (emphasis supplied). Since the petition was filed on October 1, 1974, 61 days prior to the expiration date of the contract, the petition herein was timely under these cases as well.

Furthermore, the Employer's failure to give notice of intent to terminate the contract does not, under the circumstances of this case, nullify the timeliness of the petition. Where, as here, the petition is timely filed during the open period of the contract and prior to the *Mill B* date,⁷ the subsequent expiration of the *Mill B* date does not operate retroactively to render the petition untimely.

In view of the foregoing, we shall remand the case to the Regional Director for the purpose of conducting an election in the following unit:⁸

All full-time and regular part-time waiters, waitresses, cooks, bus boys, cashiers, hostesses and dishwashers employed at the Employer's restaurant presently located at 7301 West North Avenue, River Forest, Illinois, but excluding

year of a 3-year contract, but not within the open period prior to its termination.

¹ *Deluxe Metal Furniture Company*, 121 NLRB 995 (1958).

² *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962).

³ *Montgomery Ward & Co., Incorporated*, 137 NLRB 346 (1962).

⁴ *The Absorbent Cotton Company*, 137 NLRB 908 (1962).

⁵ The petition in *Montgomery Ward* was filed during the third year of a 5-year contract; the petition in *Absorbent Cotton* was filed during the third

⁷ *Mill B, Inc., Division of Irwin & Lyons, Partners, d/b/a/ Irwin & Lyons*, 40 NLRB 346 (1942).

⁸ The unit is as stipulated by the parties.

confidential employees, professional employees,
guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote
omitted from publication.]