

**Brown Transport Corp. and Drivers, Chauffeurs, Warehousemen and Helpers Local No. 71, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. Case 11-RC-5478**

October 5, 1989

## DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND HIGGINS

On August 16, 1988,<sup>1</sup> the Acting Regional Director for Region 11 issued a Decision and Direction of Election in the above-entitled proceeding. He found that the petitioned-for single terminal unit of over-the-road drivers, city pickup and delivery drivers, warehousemen, hostlers, mechanics, mechanics' helpers, and garage servicemen employed at the Employer's Charlotte, North Carolina terminal is an inappropriate unit, and that the only appropriate unit is the historical systemwide (nationwide) unit of employees at all the Employer's 98 terminals. The Regional Director further found that there was no contract barring an election in the expanded unit. Accordingly, as the Petitioner had expressed a willingness to proceed to an election in any unit found appropriate, the Acting Regional Director directed an election in the broader unit and allowed the Petitioner an additional period of time in which to demonstrate the requisite showing of interest in the larger unit.

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's decision, and motions to stay the election and to present oral argument before the Board. The Employer contended, inter alia, that because the Petitioner had amended its petition at the hearing to seek a systemwide unit, the petition was not timely filed inasmuch as it was barred by the new contract executed between it and the Intervenor.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have carefully considered the entire record in this proceeding, including all the parties' submissions, and, for the reasons set forth below, we deny the Employer's request for review of the Acting Regional Director's decision, as well as its motions to stay the election and to present oral argument.

The relevant facts are undisputed. The Employer is engaged in the interstate transportation of freight

and other commodities, operating out of 98 terminals in 25 States. The Employer has over 2500 employees nationwide, approximately 360 of whom are employed at the Charlotte facility. The instant petition was filed on March 1, seeking to represent employees at the Employer's Charlotte terminal only.<sup>3</sup>

Hearings were held on the petition on March 25, April 8, May 26, and July 27. At the March 25 hearing, apparently in response to the Employer's stated contention that the smallest appropriate unit was nationwide in scope, the Petitioner moved to amend its petition to reflect an additional 54 Teamsters local unions as Joint Petitioners. At the April 8 hearing, in response to a question from the hearing officer, the Petitioner expressed a willingness to "take an election" in whatever unit was found appropriate, although it continued to seek the narrower, petitioned-for unit.

The Intervenor has represented the Employer's employees in a systemwide unit since 1961, and has entered into successive collective-bargaining agreements with the Employer. On April 29, the Employer and the Intervenor executed a new 3-year contract, effective May 1, covering the existing unit.

The Employer contends that this contract, validly executed during the 60-day insulated period, bars an election where the alternative unit (or amended petition) seeks a larger and substantially different unit from that sought in the original petition, and where the "request" or petition for such unit has not been made prior to the commencement of the 60-day insulated period. See *Centennial Development Co.*, 218 NLRB 1284 (1975).<sup>4</sup>

The Acting Regional Director found that the instant petition clearly was timely with regard to the single terminal unit sought; however, he found the petitioned-for single location unit inappropriate.<sup>5</sup> Moreover, distinguishing *Centennial Development*, he found that the new contract did not bar an immediate election in the broader unit, inasmuch as the Petitioner had neither amended its petition at the hearing to seek any other unit nor made an affirmative alternative unit request. Accordingly, he

<sup>3</sup> On or about the same date, other Teamsters locals filed petitions seeking single location units at the Employer's terminals in St. Louis, Missouri, Pennsauken and Linden, New Jersey, and Cincinnati, Ohio.

<sup>4</sup> See also *Allied Beverage Distributing Co.*, 143 NLRB 149 (1963); *Grand Sheet Metal Products Co.*, 110 NLRB 1654 (1954); *American Suppliers*, 98 NLRB 692 (1952).

<sup>5</sup> No party has requested review of the Acting Regional Director's unit determination, accordingly, we have not reviewed that issue. Inasmuch as the Regional Director's determination that the nationwide unit is the only appropriate unit is final and is not subject to Board review, the Employer's and Intervenor's motions to consolidate this case with the petitions seeking four other single location units at the terminals indicated in fn 3, supra, are moot and are denied.

<sup>1</sup> All dates are in 1988 unless otherwise noted.

<sup>2</sup> Drivers Mutual Association, Inc.

concluded that the instant petition remains timely, and he directed an election in the systemwide unit, giving the Petitioner an additional period of time in which to demonstrate the requisite showing of interest in the expanded unit which he stated must have been obtained prior to May 1.

It is well established that where a petition is later amended, even during the hearing itself, the filing date of the original petition is controlling "if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered . . . ." <sup>6</sup> On the other hand, if the amended petition seeks a unit that is substantially larger and different in character, that amended petition would be treated as a new petition filed on the date of the amendment and as such must be supported by an adequate and timely showing of interest. <sup>7</sup>

In *Centennial Development*, as in the instant case, although there was an existing systemwide unit which had been represented by another union, the joint petitioners sought elections in single project units. During the course of the hearing on the petitions, the joint petitioners stated, alternatively, that they wished to represent the employees in the existing employerwide unit. The Board found that the joint petitioners' alternative unit request constituted an amendment of their petition and, inasmuch as the alternative unit was basically different in character from the originally requested single project units, the Board concluded that an election could be held in the existing unit only if two conditions were met: (1) the insulated period must have elapsed without execution of a new agreement to succeed the recently expired one; and (2) a sufficient showing of interest to support an election in the existing unit must have been obtained before the date of execution of a new contract between the employer and the intervenor. <sup>8</sup> Although the first of these conditions was met, the petitioners did not obtain a sufficient showing of interest until after the new contract had been executed; thus, the Board found that new contract barred an election in the existing unit and dismissed the petitions.

In the instant case, however, the Acting Regional Director found that, unlike the situation in *Centennial Development*, the Petitioner did not formally take an alternative unit position and did not affirm-

atively seek an election in the broader unit. While the Acting Regional Director's decision simply provides that the Petitioner stated "in a colloquy among counsel" that it was "prepared to take" an election in whatever unit was found appropriate, the fact that it was the hearing officer who initiated the inquiry about an election in an expanded unit is well supported in the record. In response to the hearing officer's question regarding the Petitioner's position with respect to proceeding to an election in a larger unit, the Petitioner's attorney responded: "I've already stated we want a short unit but we will participate in any unit election directed by the Regional Director." Further, the Petitioner's statement at the May 26 hearing that it was prepared to "take an election" in whatever unit was found appropriate, was in response to an unsuccessful attempt made by the Employer's counsel to prove that the Petitioner was really seeking a nationwide unit. Specifically, the Petitioner's counsel stated that "from the first day of the hearing the Employer has said only a nationwide unit is appropriate [but] from the first day of the hearing we've stated that we weren't seeking that." He went on to state, however, that "if a nationwide unit is deemed to be appropriate, we'll take an election in it."

At all times, the Petitioner argued that the petitioned-for unit was appropriate, and that an election should be held in that unit. Thus, because the Petitioner did not request to amend its petition to enlarge the unit at the hearing and inasmuch as the petition was filed on March 1, appropriately within the 90-60-day window period, the Acting Regional Director concluded that it remained timely. We agree.

Our dissenting colleague argues that this distinction between a formal amendment or affirmative request for an alternative unit and a subtly worded assent to proceed to an election in an alternative unit merely elevates form over substance and interferes with the right of an employer and an incumbent to negotiate and execute a new or amended agreement during the insulated period. We disagree. <sup>9</sup> At the time the petition for the single location unit was filed, the Petitioner was met with the Employer's position that only a broader unit was

<sup>6</sup> Also, we disagree with the inferences drawn by our dissenting colleague from the Petitioner's amendment of its petition to add various other Teamsters locals as joint petitioners. Again, that amendment was in response to the Employer's and Intervenor's unit position, a position the Petitioner continued to oppose. The only indication in the record concerning the reason for the amendment was that the original petitioner, a single Teamsters local, wanted to assure that there was a Teamsters local at each location at which the Employer had a terminal. The Petitioner's amendment, therefore, was a reasonable response to the Employer's unit contention.

<sup>6</sup> *Deluxe Metal Furniture*, 121 NLRB 995, 1000 fn 12 (1958).

<sup>7</sup> *Centennial Development Co.*, 218 NLRB at 1285. See also *Mallinckrodt Chemical Works*, 200 NLRB 1 (1972); *Polk Bros. Central Appliance Co.*, 105 NLRB 251 (1953); *Hyster Co.*, 72 NLRB 937 (1947).

<sup>8</sup> 218 NLRB at 1285.

appropriate. The Petitioner continued to seek the narrower unit, but expressed its willingness to "take an election" in the broader unit if, but only if, forced to do so by a finding that the petitioned-for unit was inappropriate, as it turns out was the case. Further, at the time the petition was filed, there was no new contract, and all parties were on notice as to the issues being litigated.

The 60-day insulated period provided by the Board's contract-bar policy serves a very valuable purpose for all parties involved in collective bargaining. It acknowledges their right to be free of rival union petitions during the last 60 days of a contract, a time when the task of negotiating an agreement acceptable to all parties generally is in its most serious stages. The policies set forth by the Board in *Deluxe Metal* and *Centennial Development* are designed to prevent a petitioner from being able to circumvent the insulated period by an amendment of its petition. In the instant case, however, there was no amendment. Rather, the hearing officer simply followed normal Board practice and procedure in inquiring as to the Petitioner's willingness to proceed to an election in an alternative unit should the petitioned-for unit be found inappropriate. As a normal practice, when the Board finds the appropriate unit to be broader than that petitioned for, and the petitioner has indicated a willingness to represent that expanded unit, the original filing date of the petition remains unchanged, and the petitioner is given an additional period of time in which to demonstrate a sufficient showing of interest in the broader unit.<sup>10</sup>

The dissent takes the anomalous position that irrespective of how the petitioned-for unit was enlarged (i.e., by the Petitioner's formal amendment or request, or by the Board in its determination) an election in the broadened unit should occur only if the conditions of *Centennial Development* have been met. Contrary to Chairman Stephens, we would not accord the same treatment to cases where a petition is amended by the petitioner and to cases where the Board on its own initiative broadens a petitioned-for unit, if the unit has been substantially enlarged in character, size, or the number of employees covered. The dissent simply asserts as its reason for rejecting the Board's longstanding practice that such a distinction "merely elevates form over substance, and interferes with the right of an employer and incumbent union to negotiate and execute a new or amended agreement during the insulated period."

<sup>10</sup> See, e.g., *North Arundel Hospital Assn.*, 279 NLRB 311, 312 fn. 10 (1986), *Eastman West*, 273 NLRB 610, 614 fn. 13 (1984). Also, see generally NLRB *Casehandling Manual*, Sec. 11030.5.

Thus, while the dissent recognizes that the Board's contract-bar doctrine strikes an accommodation among three competing interests—the freedom of an employer and a union to enter into a collective-bargaining relationship, the stability of bargaining relations once established, and employee freedom of choice—we believe that it does not give sufficient weight to the third competing interest in the circumstances here. The dissent's extension of *Centennial* to cases where the Board on its own initiative broadens the petitioned-for unit fails to protect employee freedom of choice by not allowing sufficient time for the Board to resolve all the issues raised by a timely filed petition.<sup>11</sup>

Our *Deluxe Metal* rule provides a 30-day window in which to file a rival petition. Absent agreement of the parties as to the unit, it is not possible to conduct a hearing, schedule the filing of briefs, and issue a Regional Director's decision during that limited period. As a consequence, the Regional Director's decision will always issue during the insulated period. A petitioner, who is confronted by a contention that only a larger unit is appropriate and who is willing to "take an election" in that unit, would be severely prejudiced were we to find as a bar a contract executed by the Employer and the incumbent union during the insulated period and while the litigation is continuing. Neither *Centennial Development* nor *Deluxe Metal* was ever intended to restrict the full litigation of issues raised by a timely filed petition.<sup>12</sup>

<sup>11</sup> The practical effect of extending *Centennial* in this manner is to place a petitioning union in the unreasonable position of determining whether to file an election petition in a smaller unit (its first choice) and to risk having its petition dismissed based on the Board's contract-bar doctrine (if an intervening contract is entered into between the employer and the incumbent union prior to the resolution of all the issues by the Regional Director); or whether to file an election petition in the largest possible appropriate unit (even though perhaps less desirable) or alternative units, to ensure that its petition is not dismissed (based on the Board's contract-bar doctrine), in the event that the Board finds the smaller unit inappropriate and directs an election in a broadened unit.

<sup>12</sup> As stated above, it is generally impossible to resolve all the issues raised by a timely filed petition during the 30-day window period and prior to the insulated period during which time an employer and incumbent union are now permitted to execute a collective-bargaining agreement. We are faced with the problem of an intervening contract here only because, under *RCA Del Caribe*, 262 NLRB 963 (1982), the employer is required to continue bargaining and to execute any contract reached with the incumbent union, even though a petition has been filed by an outside union, and all the issues raised by the petition have not been resolved. Prior to the issuance of *RCA Del Caribe*, an employer faced with a pending petition from an outside union was required to cease bargaining with an incumbent union and maintain a posture of strict neutrality with respect to both the incumbent and the challenging labor organization, until such time as one or the other had been certified following a Board-conducted election. Thus, prior to *RCA Del Caribe* and at the time *Centennial* was decided, an employer and an incumbent union were not permitted to negotiate and execute a contract prior to the time a labor organization had been certified following a Board-conducted election. If this case had arisen prior to *RCA Del Caribe*, the employer would not have been able to negotiate or execute a contract before the Acting Regional Director issued his decision, leaving the union with some time in

*Continued*

Each in a different context announced the Board's desire that the parties to a collective-bargaining relationship be free of any challenge to that relationship made *during* the insulated period.

Here the challenge was made at the appropriate time, and the Employer and the Intervenor were on notice throughout the litigation, both of the Board's policy of inquiring as to the Petitioner's willingness to participate in an election in a broader unit and of this Petitioner's willingness to do so. In short, the Petitioner made no new challenge to the parties' relationship during the insulated period beyond responding that it would "take an election" in the unit that the *Employer* and the *Intervenor* argued was the *only* appropriate unit. Thus, it was the Employer and the Intervenor who argued that only the systemwide unit was appropriate; hence, they were or should have been on notice at the time they executed their new agreement that it may not have constituted a bar, should their argument prevail. In such circumstances, we find no warrant for extending the *Deluxe Metal-Centennial* policy.

Having found no bar to the instant petition, the Acting Regional Director appropriately gave the Petitioner the customary 10 days, until August 26, to demonstrate that it had the necessary showing of interest to support an election in the broader unit. However, the Regional Director further ruled that any such showing of interest must have been obtained prior to May 1, the effective date of the new collective-bargaining agreement between the Employer and the Intervenor. On September 27, the Regional Director administratively determined that the Petitioner had not submitted a sufficient showing with regard to the larger unit and, therefore, dismissed the petition.

The Petitioner has appealed this administrative determination. On appeal, the Board finds that the use of the May 1 date set by the Regional Director as the cutoff date for the showing of interest is inconsistent with his finding, affirmed herein, that the new contract executed between the Employer and the Intervenor (effective May 1) does not bar the instant petition.

Accordingly, we deny the Employer's request for review, as well as its motions to stay the election and to present oral argument.<sup>13</sup> The Petitioner's appeal of the Regional Director's dismissal of the petition is granted, and the petition is reinstated and the case remanded to the Regional Director

for further investigation as to the Petitioner's showing of interest in the expanded unit, which showing may include cards dated on or after May 1.

#### ORDER

The Employer's request for review of the Acting Regional Director's Decision and Direction of Election is denied, the Petitioner's appeal of the Regional Director's dismissal is granted, the petition is reinstated, and the case is remanded to the Regional Director for further appropriate action, including investigation into the sufficiency of the Petitioner's showing of interest in the systemwide unit found appropriate.

CHAIRMAN STEPHENS, dissenting.

Contrary to my colleagues, I would grant the Employer's request for review, reverse the Acting Regional Director's Decision and Direction of Election, and dismiss the petition.

The Employer, a nationwide carrier of freight and other commodities, operates 98 terminals in 25 States, and has over 2500 employees. These employees have been represented by the Intervenor in a systemwide (nationwide) unit in successive collective-bargaining agreements dating back to 1961. At the time the instant petition was filed, the then-existing contract was due to expire on April 30, 1988.<sup>1</sup> There was no contention that this contract was a bar to the instant petition, which was timely filed on March 1, during the "open period" of the contract.

By the petition, the Petitioner sought to represent a single facility unit limited to the approximately 360 employees at the Employer's Charlotte, North Carolina location, despite the existence of the historical systemwide unit.<sup>2</sup> Hearings on the petition were held on March 25, April 8, May 26, and July 27. On March 25, in response to the Employer's and the Intervenor's contentions that the historical, systemwide unit was the smallest appropriate unit, the Petitioner moved to amend its petition to reflect an additional 54 Teamsters local unions as Joint Petitioners, apparently to assure that there was a union local having jurisdiction at each of the locations where the Employer has a terminal. The hearing officer granted the Petitioner's motion to amend, over the Employer's and the Intervenor's objections. At the hearing on April 8, in response to the hearing officer's inquiry, the Pe-

<sup>1</sup> All dates are 1988 unless otherwise noted.

<sup>2</sup> The Board has been administratively advised that on or about the same date as it filed the instant petition, other Teamsters locals filed petitions seeking single location units at the Employer's terminals in St Louis, Missouri, Pennsauken and Linden, New Jersey, and Cincinnati, Ohio.

which to file an amended petition. In *Centennial*, the contract between the employer and incumbent union was entered into after the insulated period and 3 days after issuance of the Regional Director's decision.

<sup>13</sup> We also deny the Intervenor's renewed motion to dismiss for the reasons set forth in this decision.

tioner indicated that it was willing to proceed to an election in whatever unit was found appropriate.

The Employer and the Intervenor executed a new contract covering the existing systemwide unit on April 29, which by its terms is effective for 3 years beginning May 1; it is this contract which the Employer and the Intervenor contend is a bar to the instant petition insofar as the petition is the basis for an election in the systemwide unit.

The Acting Regional Director concluded that the petitioned-for single terminal unit is inappropriate, and that the smallest appropriate unit is the historical systemwide one. He directed an election in the expanded unit, and allowed the Petitioner an additional period of time in which to demonstrate the requisite showing of interest in the broader unit.<sup>3</sup> The Acting Regional Director distinguished the circumstances of the instant case from those present in *Centennial Development Co.*,<sup>4</sup> and concluded that here, because the Petitioner did not amend its petition to seek a systemwide unit or *affirmatively* request such an alternate unit at the hearing, but instead merely stated that it was "prepared to take" an election in any unit found appropriate, the new collective-bargaining agreement does not bar the instant petition.

Contrary to the majority, I find that the Acting Regional Director has relied on a "distinction without a difference" in refusing to follow *Centennial Development*. In my view, once the petitioned-for, single terminal unit was found inappropriate, and the Petitioner had not timely submitted an adequate showing of interest to support an election in the systemwide unit, the newly executed contract bars an election in the existing unit and the petition must be dismissed.

It is well established that the Board's contract-bar policy provides for a 60-day insulated period immediately preceding and including the expiration date of an existing contract. All petitions filed more than 60 days but not over 90 days before the terminal date of any contract will be timely. *Deluxe Metal Furniture Co.*<sup>5</sup> In the instant case, the petition was filed on March 1, less than 90 days but more than 60 days prior to the April 30 expiration of the then-existing collective-bargaining agreement

between the Employer and the Intervenor. Thus, the petition was clearly timely with regard to the single terminal unit sought by the Petitioner. However, when a petitioner broadens its originally petitioned-for unit to one which is substantially larger and different in character, the broadened unit request is treated by the Board as tantamount to a new petition filed on the date of the amendment. *Centennial Development Co.*<sup>6</sup>

As the Board stated in *Centennial*, if a petitioner's requested unit is found to be inappropriate, an election in the broadened unit found to be appropriate by the Board may be held only if two conditions are met: (1) the insulated period must have elapsed without execution of a new collective-bargaining agreement; and (2) a sufficient showing of interest to support an election in the broader unit must have been obtained before the date of the execution of that new collective-bargaining agreement.<sup>7</sup>

My colleagues, in agreement with the Acting Regional Director, find that because the Petitioner did not *formally* amend its petition to seek an alternative unit, or make an *affirmative* alternative unit request at the hearing, the March 1 filing date remains controlling and the newly executed collective-bargaining agreement between the Employer and the Intervenor, covering the historical, systemwide unit, does not bar the conduct of an election in the broader unit found appropriate by the Acting Regional Director.

I find no valid reason for making such a distinction between a formal amendment or affirmative request for an alternative unit and a subtly worded assent to proceed to an election in an alternative unit, if found appropriate by the Regional Director; in either event, the result is the same. Such a distinction merely elevates form over substance, and interferes with the right of an employer and an incumbent union to negotiate and execute a new or amended agreement during the insulated period.<sup>8</sup> As the Board has noted, its contract-bar doctrine is "but another instance of the Board's striking an accommodation among three competing interests: the freedom of an employer and a union to enter into a collective-bargaining relationship, the stability of bargaining relations once established, and employee freedom of choice. . . ." *Corporacion de Servicios Legales*.<sup>9</sup> Thus, the contract-bar doctrine and the

<sup>3</sup> Inasmuch as I would dismiss the petition for the reasons set forth herein, I find it unnecessary to reach the issues of the sufficiency of the showing of interest in the expanded unit and the date by which it must have been obtained. I note, however, that the Regional Director's grant of additional time for the Petitioner to secure an adequate showing of interest in the broader unit appears to be contrary to Sec. 101.17 of the Board's Statements of Procedure, which provides, inter alia, that a petitioning union must submit an adequate showing of interest "in no event later than the last day on which the petition might be timely filed. . ."

<sup>4</sup> 218 NLRB 1284 (1975)

<sup>5</sup> 121 NLRB 995 (1962), as modified by *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).

<sup>6</sup> 218 NLRB at 1285, citing *Deluxe Metal Furniture*, 121 NLRB at 1000 fn. 12. See also *Mallinckrodt Chemical Works*, 200 NLRB 1 (1972); *Polk Bros. Central Appliance Co.*, 105 NLRB 251 (1953); *Hyster Co.*, 72 NLRB 937 (1947).

<sup>7</sup> Id.

<sup>8</sup> See *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982).

<sup>9</sup> 289 NLRB 612 (1988).

insulated period, in particular, were established to further the Act's ultimate goal of fostering industrial peace. *Deluxe Metal Furniture*, supra.

In the instant case, the distinction made by the Acting Regional Director and adopted by my colleagues enables the Petitioner to avoid the effects of the insulated period merely because, technically, it was the Board that expanded the unit, rather than the Petitioner directly. This distinction is particularly suspect in this case, because, shortly after filing its petitions for several single-facility units, the Petitioner amended its petition in the instant case to reflect 54 additional Teamsters locals as Joint Petitioners, leading one to believe that, even at the outset, the Petitioner was aware that the systemwide unit might be the only appropriate unit.<sup>10</sup> Nonetheless, my colleagues allow the Petitioner to proceed to an immediate election in the broader unit because the original petition was filed in a timely manner, even though at the time the petition was, in effect, amended to support the broader unit, a new or explicitly amended petition would have been untimely. *Deluxe Metal*, supra; *Centennial Development*, supra. Thus, a petition for a single-facility unit is in effect deemed a "foot in the door," rendering any subsequent contract reached by the Employer and the incumbent union vulnerable for contract-bar purposes. In my opinion, if, as here, the overall unit is found to constitute the smallest appropriate unit, the Petitioner should be required to have organized that unit and petitioned for it in a timely fashion, i.e., during the 90- to 60-day open period. Otherwise, it should be required to wait for the next open period.

I believe the reasoning of the majority is contrary to the purposes and goals expressed in *Centennial*, supra. Where a petitioned-for unit has been substantially enlarged in character, size, or the number of employees covered, it should make no difference whether this was done by a petitioner's formal amendment or request, or by the Board in its determination. Thus, regardless of the circumstances or of the date on which they occurred, an election in the broader unit should occur only if the conditions of *Centennial Development*, supra, have been met.

In the instant case, it is clear that the first of the *Centennial Development* conditions has not been met. Thus, on April 29, the Employer and the Intervenor executed a new collective-bargaining

agreement to succeed the agreement due to expire the following day. The amendment to the Petitioner's petition, whether by the Board or the Petitioner itself, occurred well after the effective date of the new agreement, making the petition for the broader unit untimely and any election in the existing unit barred by the new contract. *Centennial Development Co.*, supra.<sup>11</sup>

In responding to my dissent, my colleagues make several assertions on which I make the following comments: First, because the issue here is the applicability of the contract-bar rule of *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 fn. 12 (1958), as reaffirmed in *Centennial Development*, the majority's reliance on the Board's "long standing practice" of permitting additional time to establish a showing of interest in cases that do not raise contract-bar issues is entirely misplaced. (See cases cited at fn. 10 of the majority opinion and accompanying text.) Furthermore, I do not understand how the majority can convincingly suggest that the *Centennial Development* rule made practical sense only under the regime of *Midwest Piping & Supply Co.*, 63 NLRB 1060 (1945), which the Board overruled in *RCA Del Caribe*, 262 NLRB 963 (1982). My colleagues argue that "prior to *RCA Del Caribe* and at the time *Centennial* was decided, an employer and an incumbent union were not permitted to negotiate and execute a contract prior to the time a labor organization had been certified following a Board-conducted election. If this case had arisen prior to *RCA Del Caribe*, the employer would not have been able to negotiate or execute a contract before the Acting Regional Director issued his decision, leaving the union with some time in which to file an amended petition" [slip op. at 9-10 fn. 12]. I doubt the accuracy of this contention, for the Board in *Shea Chemical Corp.*, 121 NLRB 1027, 1029 (1958), expressly stated that the *Midwest Piping* doctrine did "not apply in situations where, because of contract bar or certification year or inappropriate unit or any other established reason, the rival claim and petition does not raise a real representation question." Clearly, under either scheme, *Midwest Piping* or *RCA Del Caribe*, an incumbent union and employer could enter into a contract in the face of a rival petition that seeks an *inappropriate* unit, as was the case here. It may well be, as my colleagues assert (slip op. at 10 fn. 11), that the treatment of amended petitions under contract-bar rules does create some risk of dismissal for the petitioner who initially seeks what is ulti-

<sup>10</sup> As the majority notes, the Petitioner sought amendment so as to "assure" the presence of a Teamsters local if the historical nationwide unit was found to be the only appropriate unit. Thus, it is clear that, at the initial hearing date, the Petitioner recognized the need to ensure a Teamsters representative's presence on a nationwide unit basis. In my view this is tantamount to acquiescing to an alternative unit from the outset of the hearing.

<sup>11</sup> See also *Allied Beverage Distributing Co.*, 143 NLRB 149 (1963); *Grand Sheet Metal Products Co.*, 110 NLRB 1654 (1954); *American Suppliers*, 98 NLRB 692 (1952).

mately determined to be an inappropriate unit. But that has been the case since 1958, not just since 1982. If the time has come to reexamine this particular aspect of the contract-bar rules, I would suggest that we do so in a more forthright manner, rather than follow my colleagues' approach of leaving *Centennial Development* intact while erecting an artificial distinction between a party's formal

amendment to its representation petition and a Board-initiated amendment.

Accordingly, for the reasons set forth above, I find that the new collective-bargaining agreement between the Employer and the Intervenor bars an election in the existing systemwide unit, and I would dismiss the petition as untimely filed.