Crompton Company, Inc. *and* **Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, Petitioner.** Case 5-RC-11713

February 22, 1982

DECISION ON REVIEW

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer. On January 22, 1982, the Acting Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate for purposes of collective bargaining a unit consisting of all production and maintenance employees employed by the Employer at its Waynesboro, Virginia, Shenandoah plant, but excluding all other employees, including office clericals, guards and supervisors as defined in the Act. In so doing, the Acting Regional Director rejected the arguments by the Employer and Fiber Workers Associated, Inc. (the Intervenor), which, *inter alia*, contended that the petition filed by the Petitioner was barred by an agreement entered into by the Employer and the Intervenor extending the collective-bargaining agreement between the parties.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Intervenor each filed a timely request for review of the Acting Regional Director's Decision and Direction of Election. Both parties contend, *inter alia*, that the Acting Regional Director erred in concluding that the extension agreement entered into by the Employer and the Intervenor did not bar the petition filed by the Petitioner.[1]

Pursuant to Section 102.67(g) of the Board's Rules and Regulations, Series 8, as amended, the Board grants review of the Acting Regional Director's Decision and Direction of Election limited only to the issue of whether the Acting Regional Director erred in concluding that the extension agreement entered into by the Employer and the Intervenor did not bar the petition filed by the Petitioner.

The material facts are not in dispute. The Intervenor was first certified by the Board in 1966 to represent the same bargaining unit as that petitioned for. After receiving the majority of the valid votes in an election involving another union, the Intervenor was again certified by the Board in 1969. The Employer and the Intervenor have signed a series of collective-bargaining agreements since 1961. Their most recent agreement extended from January 10, 1979, to December 1, 1981.[2] On November 25, the Employer and the Intervenor executed an agreement which extended the January 10, 1979, contract. The extension agreement read as follows:

> The undersigned . . . hereby agree that the collective bargaining agreement between Crompton Company and Fiber Workers Associated dated January 10, 1979 which is set to expire on 8:00 a.m. December 1, 1981, is hereby mutually extended until 8:00 a.m., February 1, 1982, in accordance with the provision of Section 7.5(b) of said contract, provided that in any event if the parties hereto reach agreement on a new collective bargaining agreement prior to February 2, 1982, said new agreement shall supersede this present agreement or any extension thereof and shall take effect on the effective date provided therefor in the said new agreement.

The extension agreement was executed 6 days prior to the expiration of the January 10, 1979, contract.

On December 2, the Employer and the Intervenor concluded their negotiations on a successor contract having reached oral agreement on all the terms and conditions. On December 3, the Intervenor's board of directors approved the successor agreement. On December 11, the Petitioner filed a petition to represent the employees in the aforementioned unit. On December 18, pursuant to the Intervenor's bylaws, its membership ratified the new collective-bargaining agreement. After the ratification, the Employer and the Intervenor met and executed the new agreement effective December 18, 1981, to December 18, 1984.

At the hearing, the Employer and the Intervenor contended that the Board's contract-bar principles mandate dismissal of the Petitioner's petition because they entered into a timely extension agreement on November 25 and that extension agreement had a definite termination date beyond which the January 10, 1979, agreement would no longer remain in effect. Thus, the Employer and the Intervenor contended that the Petitioner's petition was

[1] In their requests for review, the Employer and the Intervenor also contend that the Acting Regional Director erred in rejecting their argument that a new collective-bargaining agreement was entered into by the parties on December 2, 1981, prior to the date of the petition, and thus bars the petition. The Acting Regional Director found that, although the Employer and the Intervenor reached final agreement on all the terms and conditions of the new collective-bargaining agreement on December 2, 1981, the new contract was not formally executed by the parties until December 18, 1981. By application of the Board's well-established rule that a written agreement must be signed by both parties in order to bar an election, the Acting Regional Director concluded that the petition was not barred. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The requests for review by the Employer and the Intervenor on this issue are hereby denied as they raised no substantial issue warranting review.

[2] All dates are in 1981 unless otherwise indicated.

not filed during the open period. The Petitioner contended that the extension agreement did not bar its petition because it was premature and was of an indefinite duration.

The Acting Regional Director concluded that, although the extension agreement was not premature,[3] it was of an indefinite duration and thus did not bar the petition filed on December 11. He found that the extension agreement was indefinite because it was intended to be effective until February 1, 1982, or any prior date if there was agreement by the parties on a new contract.

In reaching this conclusion, the Acting Regional Director relied on the Board's decision in *Frye & Smith, Ltd.*, 151 NLRB 49 (1965). In *Frye*, the employer and the intervenor entered into a timely extension agreement to "maintain the provisions of the expired agreement in effect for a period of 30 days or until a new contract was signed, whichever was sooner." Due to the indefinite term of that agreement, the Board concluded that the extension agreement did not operate as a bar to a petition filed during the term of the extension agreement.

In their requests for review, the Employer and the Intervenor contend that the extension agreement was for a definite term. Thus, the Employer contends:

> [T]he Agreement of Extension extended the January 10, 1979 agreement to a date certain of February 1, 1982 and it was valid to that date unless and until a condition subsequent occurred, i.e., the reaching of a new agreement which would supersede the extended agreement. In the absence of a new agreement, the contract was extended only until February 1, 1982. [The Employer's "Request for Review of Acting Regional Director's Decision and Direction of Election," p.5]

The Board adopts the Acting Regional Director's Decision and Direction of Election because the extension agreement is of an indefinite duration. When an extension agreement is qualified by a condition subsequent as in *Frye* and the instant case, there is no fixed term and thus those wishing to file a representation petition are not apprised of the open period. However, even if the extension agreement were for a definite duration until February 1, 1982, as the Employer and the Intervenor argue, it still would not bar the Petitioner's petition.

One objective of the Board's contract-bar rules is for a collective-bargaining agreement to have a fixed term on its face so that anyone can immediately ascertain when the open period begins and ends and can know when a representation petition may be appropriately filed. Thus, the contract-bar rules provide for an open period from 60 to 90 days prior to the expiration of the existing contract during which the existence of the contract will not act as a bar to a petition for an election within the unit covered by the contract. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962), modifying *Deluxe Metal Furniture Company*, 121 NLRB 995 (1958) (60 to 150 days). Thereafter, to enable the parties to reach a new agreement, the final 60 days of the existing collective-bargaining agreement is an "insulated period" during which the contract bars petitions for elections. *Deluxe Metal Furniture Company, supra*. These rules provide a balance between dual objectives. First, they further industrial peace and stability by assuring that the labor relations environment will not be disrupted during the term of a collective-bargaining agreement and by providing the parties with a period just before the expiration of the contract during which they can negotiate a new agreement free from such disruption. Equally important, however, the rules provide a set opportunity for employees who are disenchanted with the performance of their collective-bargaining representative to seek its removal or replacement with another representative.

Judged against these objectives, agreements of less than 90 days, even if they are for a definite period, fail to meet either objective. Because of their short duration, they provide little in the way of industrial stability. Because they are for less than 90 days, they provide for either an abbreviated period, or, as in this case, no period during which employees may act to remove a bargaining representative with which they are disenchanted. Therefore, such agreements will not bar a petition filed during the term of the agreement. This rule applies even if the agreement is for a fixed duration of less than 90 days and without regard to whether the agreement is an extension of an existing contract or a new contract.

Accordingly, for the above reasons, we affirm the Acting Regional Director's conclusion that the extension agreement is not a bar.

MEMBER JENKINS, concurring:

I would simply deny review, and therefore do not subscribe to the foregoing Decision on Review.

[3] The Acting Regional Director relied on *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990 (1958), where the Board stated that an extension agreement signed during the insulated 60-day period prior to expiration of the contract is not a premature extension.