STATE OF CONNECTICUT
DEPARTMENT OF LABOR
CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the Matter of
LOEHMANN CHEVROLET COMPANY, INC.
- and -
FRANCIS W. KLEIN
- and -
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, C.I.O.

Case No. E-595
Decision No. 306-A
Decided June 30, 1954

APPEARANCES

MESSRS. JOHN J. FITZGERALD and
JOHN R. FITZGERALD, FOR THE EMPLOYER

ATTORNEY MARGARET C. DRISCOLL, FOR THE UNION

ATTORNEY NORMAN ZOLOT, AMICUS CURIAE

SUPPLEMENTAL DECISION

After the issuance of our Decision and Direction of Election in this matter on May 13, 1954, the Union, on May 26, 1954, filed a Petition with the Board entitled "Petition For Rehearing And Motion To Stay Election" which in fact constituted a motion for reargument of the case. The grounds stated for asking the reargument were

"that the Order of the Board is contrary to its own past precedents and in violation of the existing legal precedents that an oral contract is a bar to an election and is further outside the scope of the powers conferred upon the Board under the existing law."
The Motion also contained a request that the election which the Board ordered to be held be stayed until reargument was had and a decision rendered. This request was granted and the election has been stayed until after disposition of the Motion.

The Board decided to hear oral arguments and on June 8, 1954 a hearing was held at the County Court House, New Haven, for the sole purpose of reargument of the case. John J. FitzGerald and John R. FitzGerald appeared for the Employer. Attorney Margaret C. Driscoll appeared for and represented the Union, and Attorney Norman Zolot, counsel for the Connecticut Federation of Labor appeared and requested permission to appear and be heard as amicus curiae, which request was granted.

At the outset of the hearing the Employer vigorously questioned the Board's right to entertain the instant Motion for reargument, and contended that an administrative officer or board should not review a decision and revoke action once duly taken unless there has been a change of conditions occurring since the decision or where other considerations have arisen materially affecting the merits of the matter. It is admitted in this case that there has been no such change of conditions since our Decision and Direction of Election was rendered. The essence of the contention is that without some change of fact or law this Board would be without power to change its Decision and Direction of Election. The following cases were cited in support of such claims:

ST. PATRICK'S CHURCH CORPORATION vs. DANIELS ET ALS, 113 Conn. 132
MIDDLESEX THEATRE ET ALS vs. HICKORY ET ALS, 128 Conn. 20
DADUKIAN v. ZONING BOARD OF APPEALS, (ETC.) 135 Conn. 706
HOFFMAN vs. KELLEY ET ALS, LIQUOR CONTROL COMMISSION, 1:38 Conn. 614.

The Board overruled the objection and we formally state our reasons for so holding.

This proceeding under the Act is a representation proceeding which, unlike an unfair labor practice proceeding, is a non-adversary fact-finding proceeding in which it is the duty of the Board, if it is found there is a question or controversy concerning the representation of employees to determine two questions: first, to decide in each case what employees constitute an appropriate bargaining unit, and second, to ascertain the wishes of the majority of the employees in such appropriate bargaining unit with respect to their bargaining representative.


It is clear that the Employer misconstrues the nature of our Decision and Direction of Election. It is not a final action by the Board upon the Petition for Investigation and Certification of Representatives which is the matter before us. It is rather a preliminary determination of the matters referred to in the Decision. As stated in the Direction of Election, the election is "a part of the determination by the Board to ascertain the exclusive representation for collective bargaining --". If a majority of the employees designate a
union or representative, certification of the representative by the Board follows. If a majority of the employees vote against representation the petition is dismissed.

There is no doubt about the Board’s power to grant a motion for reargument in this case. Such a motion is not a matter of right but a plea to the sound discretion of the Board to be determined by it on the circumstances in each case, and which will not be permitted to interfere with the efficient functioning of the Board.

II

The Motion for reargument raised substantially two questions:

1. Does the Connecticut State Labor Relations Act require the Board to entertain a negative Petition by employees?

2. Does an oral contract constitute a bar to consideration by the Board of a Petition for the Investigation and Certification of Representatives?

We shall discuss each of these questions separately, in the order stated in Sections III and IV hereof.

III

THE NEGATIVE PETITION

The Petition for Investigation and Certification of Representatives filed in this case by the Petitioner and six other employees is on the usual form of petition used by the Board to commence proceedings in the investigation and certification of representative under the Act. In the allegation that a question or controversy had arisen concerning the representation of the employees in the bargaining unit the petition stated “most of the employees no longer want to be represented by UAW CIO.” Although said Petition included a request that the Board investigate such controversy and certify to the parties the name of the representatives designated or selected by said employees, we have found that the purpose of the petitioners in filing their petition was to establish the fact that the Union did not currently represent a majority of the employees within the appropriate unit. Despite the fact that the petition specifically requested an investigation of the controversy concerning representation and to certify the name of the representative that has been designated or selected, we have called this type of petition a “negative petition” in that it does not seek, in fact, to have a representative certified. We held in our original decision that the petition in this case is authorized under provisions of Section 2279 (c) subsection 3 of the Act, and therein stated our reasons for so holding. This decision is attacked by the Union and the amicus curiae on the ground that such petitions are not authorized under the terms of the Act. After careful consideration of all of the arguments presented by the interested parties, including those orally made upon reargument of the case and as appear in the Briefs filed, we have concluded that our original decision with respect to entertaining of negative petitions should not be departed from, and for the following reasons:
Our Act in part provides:

"Sec. 7391. Rights of employees. Employees shall have the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choice and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion by employers."

"Sec. 2279c (7393, 1949 Revision as Amended). (3) When it is complained by an employee or his representative that there is a question or controversy concerning the representation of employees, the board shall hear the matter and order an election, or use any other suitable method to ascertain such representatives."

It will be noted that these sections not only are expressed in terms of "rights of employees" but also specifically require the Board to act if "it is complained by an employee ... that there is a question or controversy concerning the representation of employees." Furthermore, it is the policy of our Act to encourage collective bargaining if, but only if, the representative is of the employees own choosing. Under these provisions and this policy, we believe that an employee should, in fairness to employees generally, be able to raise the question of representation at appropriate times. (Underscoring ours)

In the Matter of Bridgeport Coat & Apron Company, Case No. U-71 (decided April 15, 1946) we said:

"If any employee within the appropriate unit is not satisfied that the Union representing the unit of which he is a member has been freely designated by a majority of the employees within the unit as their bargaining representative, he may, but not his employer, under the terms of 938h\(^1\), subsection 3, of the Act, complain to this Board setting forth that there is a question or controversy concerning the representation of the employees and the Board will thereupon investigate and determine the wishes of the majority of the employees within the unit concerning representation. The Act thus provides a quick and an impartial way for any employee to have the Board determine the wishes of all of the employees involved with respect to the bargaining representative."

Although the Act gives the employees the right of a free choice of their representatives, it is not an unrestricted right. Once they make their choice they are bound thereby for a reasonable period of time. There is no specific provision as to the duration of the certification of a certified representative. We have held consistently in a number of decisions that the theory of the Act is that free opportunity for negotiating with duly accredited representatives of employees within appropriate bargaining units is likely to promote harmonious and peaceful labor relations; that the Act specifically authorized and empowers the Board to conduct elections by secret ballot or use other suitable methods to ascertain

\(^{1}\) Now Sec. 2279c (7393, 1949 Revision as Amended)
the wishes of employees with respect to their bargaining representatives; that it was necessary in order to effectuate the purposes of the Act to endow the certification by this Board of a bargaining representative with a longevity for a reasonable period of time despite the repudiation of the union shortly after an election; that employees, having been given the opportunity to freely exercise their considered judgment in the choice of a bargaining representative through the medium of a secret ballot should be and will be bound for a reasonable period of time by their act; and that to hold otherwise would be to defeat the very purposes of the Board's investigation and ascertainment of representatives.

In the Matter of E. L. Beerwort, Inc., Case No. E-321 (April, 1950)
In the Matter of Connecticut Bearings Co., Inc.
Case No. E-388 (January, 1951)
In the Matter of The Patterson Club, Inc.
Case No. E-416 (September, 1951)

How long the employees can be deprived of the opportunity to express their wishes concerning representation after a representative has been certified by this Board will depend upon the facts and circumstances in each case. The Union in this case was certified as the exclusive bargaining representative of the employees within the appropriate unit on March 13, 1953. The instant petition was filed March 12, 1954. The prior Certification of the Union does not constitute a bar to our consideration of it.

The Dichello Distributors case (Case No. E-317 and U-322 decided June 22, 1950) referred to in our original decision was in fact two cases. One case concerned an unfair labor practice charge of refusal to bargain. The second case concerned a petition filed by an employee alleging that a question or controversy had arisen concerning the representation of certain employees and requesting an investigation and certification of the representative designated. A consolidated hearing upon both cases was held. We found that the employer was not guilty of the unfair labor practice as charged for reasons set forth in the opinion in that case that need not be incorporated herein. With respect to the Petition for Certification and Investigation of Representatives, we found its sole purpose was the revocation of the certification of the union as a representative of the employees. In other words, what was being sought was the determination through an investigation conducted by the Board of the fact as to whether the certified representative currently was the choice of the employees within the appropriate bargaining unit. In our decision in that case we called such petition a "negative petition" in that it did not seek to have a representative certified. In our decision we stated:

"V The Petition. The petition in this case had for its sole purpose the revocation of the certification of the Union as the representative of the employees. Such petitions are usually referred to as negative petitions in that they do not seek to have a representative certified. We have held prior hereto that employees at proper times may file such petitions for the sole purpose of having the Board determine as a fact whether or not a representative previously selected still remains the choice of at least a majority of the employees within the appropriate unit and we see no good reason to change our rule."
In V (C) of this decision we discussed the appropriate unit of employees and in Section V (D) clearly explained the reason we did not find it necessary to order an election among the employees affected. We were satisfied by evidence brought out that 4 of the 5 employees within the appropriate unit did not desire the union to act as their representative. It is not necessary in every case for the Board to ascertain the wishes of the employees with respect to their bargaining representative by an election, although in the usual case the Board utilizes this method. The Act specifically authorizes the Board to ascertain the wishes of the employees within the unit by, “an election or use any other suitable method to ascertain such representatives.” Section V (D) of that decision is as follows:

"D. DETERMINATION OF REPRESENTATIVE. In view of the unequivocal statements made by four of the five employees at the hearing that they did not wish to have the Union represent them, it is unnecessary for us to follow our usual practice of ordering an election to ascertain the wishes and desires of the employees concerning their bargaining representative. We find from such sworn testimony that a majority of the employees within the appropriate bargaining unit hereinafter designated do not desire the union to act as their representative."

We stated in our original decision in this case, in deciding that the Act required the Board to entertain a “negative petition” by employees that

"It is as important for them where a majority do not want a union, to be able to obtain an official determination of that fact, as it is for them to obtain such a finding of fact, when a majority of them do not want a union. Such a determination in favor of union representation will provide positive proof to the employer of the accredited standing of the union and will promote normal collective bargaining."

The Union and Amicus Curiae attacked the decision contending that the Act contemplated collective bargaining by employees acting through authorized representatives, and contended that the Act does not authorize this Board to entertain a "negative petition."

It is interesting to note that Section 2279 (c) (4) states:

"When it is complained by an employer or his representative that there is a question or controversy concerning the representation of employees between two or more labor organizations, the board shall hold a public hearing on such complaint after due notice. If after hearing the board finds that there is a controversy concerning the representation of employees, it may conduct an election or use any other suitable method to ascertain such representatives."

The above section specifically grants to an employer, when confronted by two or more labor organizations, the right to file a petition for Investigation and Certification of Representatives. While the petition would be in the affirmative form requesting that the Board certify the representative designated, it would be rather naive to believe that the employer desires the certification of an exclusive bargaining representative; rather, what he actually desires is the official determination by the Board of the wishes of
the employees with respect to their representation. When a union, as in this case, seeks to act as the exclusive representative of the employees, and the employees or some of them question the majority status of the union, a petition seeking an election has for its purpose the official determination by this Board with respect to the wishes of all of the employees concerning representation, which may well result in certification of a representative. It is difficult for us to believe that the Act which was passed and which grants such great benefits to employees and throws great protection around the exercise of those rights, limits the right of employees, which is granted to employers, to resort to the machinery of the Board to determine the wishes of all of the employees within the bargaining unit concerning their representation. In this case the union is claiming the right to act as an exclusive representative of the employees in the appropriate unit, and the petition of the employees shows beyond doubt that a question or controversy does exist concerning their representation. Under the circumstances we believe that the employees have the right to have this Board determine in an official manner the wishes of the employees with respect to representation.

In a case involving the New York State Labor Relations Act, which is also patterned after the Wagner Act, but differs from our Act in that petitions are permitted to be filed by "an employee or his representative or by an employer or his representative" in connection with questions or controversies concerning representation of employees, the problem of "negative petitions" was presented and discussed. In that case the employer filed its petition alleging that a question or controversy concerning representation had arisen. The purpose of the petition was to obtain an official determination of the non-representation of the union. The Board unanimously directed an election and the majority of the Board stated their views in part as follows:

"An idea has arisen that the Act does not authorize what are called "negative petitions" or 'negative certifications'. These phrases have no significance. It is just as important for an employer or his employees, where there is no union majority, to procure a negative result when the employees do not want a union, as it is to secure an affirmative result when they do want a union. Whether we call the result a 'certification' or by any other name, is immaterial. There is nothing in the statute which precludes an election in such cases."

One member of the Board did not concur in the views expressed by the majority.

Matter of J. Kappel & Bros.
13 S.L.R.B. No. 142

Also in a case involving the Pennsylvania Labor Relations Act, which act is patterned after the Wagner Act, but also permits the filing of Petitions for Investigation and Certification of Representatives by an employer, in connection with questions and controversies concerning representation of employees, a negative petition was entertained by the Board. In that case, - In Re McCoy Bros. Motor Bus Service, No. 163 (1951) - a Petition for Investigation and Certification of a collective bargaining representative for its employees was filed by the employer. It was found that the sole purpose of the employer in filing the petition was to ascertain whether the union continued to represent a majority of the employees. The union's contract with the employer was to expire 18 days from the date of the filing of the petition and
the union had given notice of its intention to negotiate a new contract. The Board directed an election at which the employees voted that they did not wish to have the union represent them as their collective bargaining representative. The Board thereupon dismissed the Petition for Investigation and Certification of Representatives and the union appealed to Court, which was permitted under said Act, asserting that the Board was without authority in law to entertain the petition which was described as a petition for decertification. The decision of the Board was affirmed by the Court. Both the Board and the Court adopted the reasoning of the Kappel case above cited.

We therefore hold that under the terms of the Act as written the Board is required to entertain the type of petition filed in this case.

IV.

The other question reargued was whether or not an oral contract constituted a bar to consideration by the Board of a Petition for Investigation and Certification of Representatives.

In the matter of Leo Hart Co., 26 NLRB 125, 129 (1940) a majority of the Board stated:

"Where a contract of reasonable duration providing for exclusive recognition is made with a labor organization that is the statutory representative of the employees as to whom recognition is granted, the Board, in furtherance of the purposes of the Act to attain stabilized labor relations in industry through collective bargaining agreements, should not proceed, pending the contract, to an investigation and determination of representatives."

In our original decision we held that, without deciding but assuming for the purpose of our decision, the Union’s contention that a valid oral agreement had been reached and entered into by the parties on December 15, 1953, such oral contract would not constitute a bar to the petition. We stated "an oral agreement lacks the stabilizing features and effect of a written contract and does not constitute a bar to the consideration of a petition for the investigation and certification of representatives". It is common knowledge that frequently the terms of an oral contract entered into by parties in good faith become sources of dissatisfaction and disagreement within a matter of a few days. It is even more so with a collective bargaining agreement which usually has numerous provisions, many times entered into after long and bitter negotiations and which affects a field of human relations in which the emotions are frequently aroused. Experience has shown that stability in labor relations is not attained until the collective bargaining agreement is reduced to writing and signed by the parties. There is abundant authority for the soundness of the Board’s decision and in view of the reargument, authority in support of the rule is herewith stated:
The United States Supreme Court in a case involving the Wagner Act stated that the history of collective bargaining process shows that its object has long been an agreement between the employer and employee as to wages, hours, and working conditions, evidenced by a signed contract or statement in writing which serves both as a recognition of the union with which the agreement is reached and as a permanent memorial of its terms.

H. J. Heinz Co. vs. NLRB 311 U. S. 514-524

The United States Supreme Court in the same case on page 524 and 525 said:

"--- the signed agreement has been regarded as the effective instrument of stabilizing labor relations and preventing through collective bargaining, strikes and industrial strife.

Before the enactment of the National Labor Relations Act it had been the settled practice of the administrative agencies dealing with labor relations to treat the signing of a written contract embodying a wage and hour agreement as the final step in the bargaining process. Congress, in enacting the National Labor Relations Act, had before it the record of this experience. --- We think that Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts as the final step in the bargaining process."

In view of this interpretation of the scope and meaning of the Wagner Act made by the U. S. Supreme Court in 1940, five years before the adoption of our Act, which was patterned after the Wagner Act, our Act beyond question also incorporates the signed agreement as the final step in the bargaining process contemplated under the Act.

Also editorial comment appearing in paragraph 2580 C. C. H. Law Reporter states:

"Under the Board's (National Labor Relations Board) 'contract bar rules' a written collective contract of reasonable duration, providing for exclusive recognition of a bona fide contracting union and covering the customary conditions of employment, ordinarily bars during its term, both a petition for certification by a rival union or any other party and a petition for decertification of the contracting union. In deciding whether the policies of the Act would best be effectuated by the dismissal of a petition or by the direction of an election, the Board weighs the public interest in preserving the industrial stability implicit in an established bargaining relationship against employees' statutory right to select and change their bargaining representatives."

and again:
"The contract must be in writing and contain substantial terms and conditions of employment."

Further comment appearing in paragraph 2580 C. C. H. Law Reporter states, in reference to the national act, that

"Collective bargaining agreement which has not been reduced to writing and signed does not constitute a bar to determination of representatives. Importance of writing and signing agreements to attainment of stability of labor relations was noted by U. S. Supreme Court in J. J. Heinz vs. NLRB (1941) - 3 Labor cases p. 51, 107, 311 U. S. 514, wherein it was held that employers' refusal to sign agreement reached through process of collective bargaining was unlawful refusal to bargain in violation of original Act."

The National Labor Relations Board in discussing this question under the National Labor Relations Act in Re Eicor 46 NLRB 1036 said:

"This Board often refuses to conduct representation investigations where there are in existence valid contracts which evidence that stability of labor relations has been attained. But experience has indicated that true stability of labor relations is not attained until collective bargaining agreements have been reduced to writing and signed. The crucial importance of the signing of agreements in the history of the collective bargaining process was recognized by the Supreme Court in the Heinz case. In the light of this history, the signing of collective agreements cannot be regarded as a mere formality. We are therefore of the opinion that a collective bargaining agreement which has not been reduced to writing and signed does not constitute a bar to a determination of representatives."

The following citations are but a few of the many cases sustaining the same proposition:

In re Stiefel Construction Corp. 64 NLRB 565
In re Whitcomb Locomotive Co. 60 NLRB 1160
In re Pittsburgh Corning Corp. 87 NLRB 100
In re American Hoist & Derrick Co. 87 NLRB 107
Air Reduction Sales Co. 58 NLRB 522
J. Sullivan & Son Manufacturing Co. (1953) 105 NLRB 65

The New York State Labor Relations Board stated in the matter of Queens Borough Gas & Electric Co. 6 SLRB 502 at page 506, that

"It is now settled in the law of labor relations that a collective bargaining agreement should be reduced to writing and signed. Experience has shown that instability and confusion will otherwise follow."
The New York Board has held to the same effect in other cases pending before it.

In the matter of Gray Line Bus Co. Case No. E-244 (1949) we declared that an oral contract does not constitute a bar to a present determination of a bargaining representative.

We therefore hold that under the terms of the Act an oral contract is not a bar to the consideration of a Petition for the Investigation and Certification of Representatives.

V.

In arriving at the conclusions reached in this case it was, of course, necessary, as in all other cases, for the Board to confine and limit itself to the construction of the Act as it is written. Much of the fine arguments presented to us in this case by all of the able and experienced representatives of the parties was directed to the policies of the Act and except to the extent that they indicated the true meaning of the Act they could not be considered by us, for it is not our right to amend the Act under the guise of construing it. If the Act as construed by us in administering it contains policies and meanings which were unrecognized and results in determinations not fully appreciated at the time of its original passage, the remedy lies with the legislature which alone may amend the Act. If, for example, and without in any way suggesting the wisdom or soundness of the suggestions, it is thought that an existing oral contract should be recognized as a bar to the consideration of a Petition for the Certification and Investigation of Representatives, or that a Certification of Representatives by this Board should be effective for a definite period of time after its issuance, these matters can be presented to the legislature for its consideration and action thereon. The original Decision and Direction of Election made by us in this case on May 13, 1954, is affirmed, except that the Direction of Election is amended to provide that the election should be held within two weeks from the date of this Decision.

CONNECTICUT STATE BOARD OF LABOR RELATIONS
BY:

/s/ L.L. Gulliver
Chairman

/s/ Peter J. McManus
Member

/s/ Vincent F. Kiernan
Member