

1942

LABOR LAW- COLLECTIVE BARGAINING CONTRACT AS BARRING QUESTIONS CONCERNING REPRESENTATION OF EMPLOYEES

Charles J. O' Laughlin
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Charles J. O' Laughlin, *LABOR LAW- COLLECTIVE BARGAINING CONTRACT AS BARRING QUESTIONS CONCERNING REPRESENTATION OF EMPLOYEES*, 40 MICH. L. REV. 1249 (1942).

Available at: <https://repository.law.umich.edu/mlr/vol40/iss8/14>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

LABOR LAW — COLLECTIVE BARGAINING CONTRACT AS BARRING QUESTIONS CONCERNING REPRESENTATION OF EMPLOYEES — The employer entered into a collective bargaining agreement with the employees as represented by Union *A*, recognizing Union *A* as the exclusive bargaining agent and giving it a closed shop. The contract was entered into in September, 1940, and was to last until September, 1942, with a provision for certain modifications before that time. Pending negotiations for modifications, a large number of the members of Union *A* decided to transfer affiliation to Union *B*. On September 24, 1941, Union *B* filed a petition under the Wagner Act to be certified as the sole bargaining agent. Union *A* resisted the claim on the ground that the collective bargaining agreement of September, 1940, was still in force and had a year yet to run. *Held*, this closed-shop contract is for a reasonable duration and is a bar to the present proceedings for certification. *In re Owens-Illinois Pacific Coast Co.*, 36 N. L. R. B. 990 (1941).

Under section 9(a) of the National Labor Relations Act,¹ a representative selected by a majority of the employees in an appropriate unit for collective bargaining is the exclusive representative of all the employees of that unit. Frequently disputes arise as to which representative has the support of a majority of the employees. If interstate commerce is affected, the National Labor Relations Board has the power under section 9 (c) of the act to investigate and certify the representatives chosen.² The original position of the board was that no collective bargaining agreement would preclude a question arising concerning representa-

¹ 49 Stat. L. 453 (1935), 29 U. S. C. (1940), § 159.

² *Id.*

tion if it were alleged that the present representatives had lost their following.³ The theory of this view was that industrial peace would be promoted if at all times the employees were assured of having representatives who presented their views. The board soon changed this position, however, for the instability of the position of the representatives constituted a threat to industrial peace. A contract should not bar a question concerning representation from arising, however, if it was not entirely valid when entered into. Thus the board has held that a contract is no bar if it was not freely entered into,⁴ if it was the result of an unfair labor practice,⁵ if the unit represented was inappropriate,⁶ if the contract was made at a time when the representatives did not have the support of a majority of the employees in the unit,⁷ if it did not grant exclusive recognition to the representatives,⁸ or if it was made or renewed pending representation negotiations.⁹ The board has also held that a contract soon to expire should not bar representation proceedings.¹⁰ But if the collective bargaining agreement is in all respects valid and has a considerable period yet to run, the board has taken the view that it will bar a question concerning representation from arising if it is reasonable in its duration. The board has never before held as it did in the principal case that a contract for more than a year's duration is reasonable.¹¹

³ *Matter of New England Transportation Co.*, 1 N. L. R. B. 130 (1936). The statute itself does not specifically deal with this question. The position of the board on this matter is particularly important because the orders in representation cases are not subject to judicial review. *American Federation of Labor v. National Labor Relations Board*, 308 U. S. 401, 60 S. Ct. 300 (1940).

⁴ *Matter of Mine B Coal Co.*, 4 N. L. R. B. 316 (1937); *Matter of National Electric Products Corp.*, 3 N. L. R. B. 475 (1937).

⁵ *Matter of H. E. Fletcher Co.*, 5 N. L. R. B. 729 (1938); *Matter of Eagle Mfg. Co.*, 6 N. L. R. B. 492 (1938).

⁶ *Matter of Brooklyn Daily Eagle*, 13 N. L. R. B. 974 (1939); *Matter of Riverside & Fort Lee Ferry Co.*, 23 N. L. R. B. 493 (1940).

⁷ *Matter of American-West African Line*, 4 N. L. R. B. 1086 (1938); *Matter of Southern Chemical Cotton Co.*, 3 N. L. R. B. 869 (1937); *Matter of H. Cohen & Co.*, 30 N. L. R. B., No. 4 (1941).

⁸ *Matter of American Cyanamid & Chemical Corp.*, 11 N. L. R. B. 803 (1939).

⁹ *Matter of J. Edwards & Co.*, 20 N. L. R. B. 244 (1940); *Matter of International Harvester Co. Tractor Works*, 36 N. L. R. B. 520 (1941); *Matter of Philadelphia Dairy Products Co.*, 36 N. L. R. B. 737 (1941); *Matter of Erie City Iron Works*, 30 N. L. R. B., No. 66 (1941).

¹⁰ *Matter of Todd-Johnson Dry Docks*, 10 N. L. R. B. 629 (1938).

¹¹ *Matter of Edward Rappaport*, 36 N. L. R. B. 484 (1941); *Matter of Presto Recording Corp.*, 36 N. L. R. B. 281 (1941); *Matter of Kahn & Feldman*, 30 N. L. R. B., No. 45 (1941); *Matter of American Hair & Felt Co.*, 15 N. L. R. B. 572 (1939); *Matter of Hubinger Co.*, 4 N. L. R. B. 428 (1937). The New York Supreme Court recently held in *Triboro Coach Corp. v. New York State Labor Relations Board*, 261 App. Div. 636, 27 N. Y. S. (2d) 83 (1941), that a three-year contract as renewed would bar proceedings under the New York Labor Act, which is similar to the Wagner Act in its operation. See 41 COL. L. REV. 524 (1941).

In *Matter of Superior Electrical Products Co.*, 6 N. L. R. B. 19 (1938), the board unanimously held that a contract for a year's duration would bar any further proceedings during the year. After that case Chairman Madden consistently held that

However, more recently the board has indicated that a contract for two and one-half years would be no bar.¹² The decision in the principal case should not be taken to mean that the board will in every case hold that even a contract of

a contract of a year's duration was reasonable. *Matter of National Sugar Refining Co. of New Jersey*, 10 N. L. R. B. 1410 (1939); *Matter of Oppenheimer Casing Co.*, 13 N. L. R. B. 500 (1939); *Matter of American Hair & Felt Co.*, 15 N. L. R. B. 572 (1939); *Matter of Utica Knitting Co.*, 23 N. L. R. B. 55 (1940); *Matter of Lewis Bolt & Nut Co.*, 23 N. L. R. B. 708 (1940); *Matter of Leo Hart Co.*, 26 N. L. R. B., No. 12 (1940). Board Member Donald Wakefield Smith held likewise. *Matter of National Sugar Refining Co. of New Jersey*, 10 N. L. R. B. 1410 (1939).

Board Member Edwin S. Smith, however, quite consistently held that no contract of itself should be a bar. *Matter of National Sugar Refining Co. of New Jersey*, 10 N. L. R. B. 1410 (1939); *Matter of American Hair & Felt Co.*, 15 N. L. R. B. 572 (1939); *Matter of Utica Knitting Co.*, 23 N. L. R. B. 55 (1940); *Matter of Lewis Bolt & Nut Co.*, 23 N. L. R. B. 708 (1940); *Matter of Leo Hart Co.*, 26 N. L. R. B., No. 12 (1940); *Matter of Eaton Mfg. Co.*, 29 N. L. R. B., No. 12 (1941); *Matter of Detroit & Cleveland Navigation Co.*, 29 N. L. R. B., No. 33 (1941); *Matter of Hatfield Wire & Cable Co.*, 30 N. L. R. B., No. 53 (1941); *Matter of Douglas & Lomason Co.*, 34 N. L. R. B., No. 8 (1941). But see *Matter of Oppenheimer Casing Co.*, 13 N. L. R. B. 500 (1939). In most of these cases Mr. Smith has stated that a board certification of the action of the employer giving a union exclusive recognition independently of any contract should preclude the question's arising for one year.

Board Member Leiserson, who succeeded Mr. Donald Wakefield Smith, at first adopted Mr. Edwin S. Smith's views. *Matter of American Hair & Felt Co.*, 15 N. L. R. B. 572 (1939); *Matter of Utica Knitting Co.*, 23 N. L. R. B. 55 (1940); *Matter of Lewis Bolt & Nut Co.*, 23 N. L. R. B. 708 (1940). Thus in *Matter of Utica Knitting Co.*, 23 N. L. R. B. 55 (1940), the decision of the board was that not even a contract of a year's duration would be a bar; but Mr. Leiserson later abandoned this view and has held that such a contract should be a bar. *Matter of Eaton Mfg. Co.*, 29 N. L. R. B., No. 12 (1941); *Matter of Detroit & Cleveland Navigation Co.*, 29 N. L. R. B., No. 33 (1941); *Matter of Hatfield Wire & Cable Co.*, 30 N. L. R. B., No. 53 (1941); *Matter of Douglas & Lomason*, 34 N. L. R. B., No. 8 (1941).

Chairman Millis, appointed to succeed Mr. Madden, has held that a contract of a year's duration should be a bar. *Matter of Eaton Mfg. Co.*, 29 N. L. R. B., No. 12 (1941); *Matter of Detroit & Cleveland Navigation Co.*, 29 N. L. R. B., No. 33 (1941); *Matter of Hatfield Wire & Cable Co.*, 30 N. L. R. B., No. 53 (1941); *Matter of Douglas & Lomason*, 34 N. L. R. B., No. 8 (1941); *Matter of Pressed Steel Car Co.*, 36 N. L. R. B. 560 (1941). Board Member Reilly, appointed to succeed Mr. Edwin S. Smith, has taken the same position. *Matter of Pressed Steel Car Co.*, 36 N. L. R. B. 560 (1941).

¹² *Matter of Detroit Plating Industries*, 39 N. L. R. B., No. 54 (1941) (dictum). See Rice, "The Legal Significance of Labor Contracts under the National Labor Relations Act," 37 MICH. L. REV. 693 (1939). The principal case is also significant as an indication of the board's attitude toward closed-shop contracts when there has been a shift in affiliation of a majority but not all of the members of the union previously representing the employees. This question, however, is beyond the scope of this note. See ROSENFARB, NATIONAL LABOR POLICY AND HOW IT WORKS 268 (1940); 17 N. Y. UNIV. L. Q. REV. 96 at 102 (1939); 38 MICH. L. REV. 516 (1940); 51 YALE L. J. 465 (1942).

one year's duration is a bar, for the board in accord with its custom announced no inflexible rule of decision. Although the tendency announced in the principal case will do much to eliminate the so-called "planned raids" upon the membership of one union for another, it is questionable whether such a rule is a wise one. It may remove incentive for the recognized union to perform the services it should perform. On the other hand, management might welcome it as a means of promoting industrial peace for a greater period of time.

Charles J. O'Laughlin