

**Duval Corporation and Arlington B. Kennedy, Petitioner, and United Steelworkers of America, affiliated with AFL-CIO. Case 28-RD-285**

January 10, 1978

**DECISION ON REVIEW AND  
DIRECTION OF ELECTION**

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On August 23, 1977, the Regional Director for Region 28 issued a Decision and Order in the above-entitled proceeding in which he dismissed the instant petition on the ground that it did not specify a unit appropriate for the conduct of a decertification election. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds that his decision dismissing the petition departed from well-established precedent and was clearly erroneous regarding a substantial factual issue.

By telegraphic order dated October 12, 1977, the Employer's request for review was granted.

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 and makes the following findings:

The Employer, a Delaware corporation, is engaged in the mining and milling of copper ore. In June 1968, the Board certified the United Stone and Allied Products Workers of America, AFL-CIO (Stone Workers), as the collective-bargaining representative of the warehouse employees employed in the Employer's warehouse at its Esperanza Property in Arizona. Subsequently, in 1970, the Stone Workers and the United Steelworkers of America (Steelworkers) merged, and the Steelworkers have since been the recognized bargaining representative of the warehouse employees. The instant petition was filed in the warehouse unit certified in 1968.<sup>1</sup>

Contract negotiations in 1974 produced a single labor agreement between the Employer and four unions: the Steelworkers, the International Union of Operating Engineers, Local No. 428, AFL-CIO (Operating Engineers), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 310 (Teamsters), and

Construction, Production and Maintenance Laborers, Local No. 479, AFL-CIO (Laborers). The preamble to the agreement stated that the contract was between the Employer and (1) the Steelworkers and (2) the Operating Engineers, Teamsters, and Laborers, jointly. The recognition clause of the contract provided, in separate numbered paragraphs, that the Steelworkers were recognized, pursuant to separate Board certifications, as the bargaining representative of all the hourly rated employees at the Esperanza location in (1) the mill department and plant mechanical department, (2) the metallurgical department, and (3) the warehouse department. The fourth paragraph of the clause recognized the Operating Engineers, Teamsters, and Laborers as the joint representative of all the employees in the mine operating department and the mine maintenance department at Esperanza. The fifth paragraph recognized the "Union," meaning all four unions together, as the exclusive representative of the employees specified in the first four paragraphs of the clause.

The terms and provisions of the contract applied to all employees represented by the four unions at the Employer's Esperanza location. Thus, the contract provided for transfer of employees to and from various departments, including the warehouse department, and also for the accumulation of seniority when an employee transferred out of the "Bargaining Unit." However, the contract stated that, for purposes of layoff and promotion, seniority would be based on continuous service in the department, except where there was a definite line of progression within that department. Furthermore, the contract established wage scales for job classifications by department and departmental lines of progression. The labor agreement also specified that separate stewards would be designated from each department, that each union would select a chief steward, and that the four chief stewards would serve on the grievance committee. In addition, the contract provided for the appointment of employees as safety committeemen for the "Bargaining Units."

Employee representatives from each department participated jointly in local negotiations for the 1974 labor agreement. Problems peculiar to each department were discussed separately and in consecutive order during the joint negotiating meetings. Additionally, some separate bargaining sessions were held concerning each department, including the warehouse department. The 1974 contract was ratified by a pooled vote of all employees entitled to vote on the agreement who were represented by the Steelwork-

<sup>1</sup> The record shows that there are approximately eight employees who work in the warehouse. These employees spend the vast majority of their time in the warehouse, and are subject to separate immediate supervision by the chief warehouseman. Most of the warehouse employees have transferred

there from other departments, but there is no daily or weekly interchange with employees in other classifications. The warehouse is located several hundred yards from the Employer's copper mill and approximately 2 miles from the open pit copper mine at the Esperanza operation.

ers, Operating Engineers, and Laborers, but the eligible Teamsters-represented employees ratified the contract separately because of a rift between the Teamsters and the other unions.<sup>2</sup>

At the hearing, the Employer's director of industrial relations testified that a single contract, containing separate recognition for the various unions in distinct units, was negotiated for convenience and in order to save printing costs.

With the foregoing facts on the record, the Regional Director concluded that the warehouse unit had been merged into a larger unit, and therefore dismissed the petition as not having been filed in a unit appropriate for the holding of a decertification election. In so deciding, the Regional Director asserted that the grievance and transfer procedures of the 1974 contract, the joint negotiation of the labor agreement, and the pooled ratification of the contract indicated the parties' intent that the warehouse unit be merged with other units.

Viewing the facts in a light very different from that of the Regional Director, we are compelled to conclude that an election should be directed in the warehouse unit. We find that the parties did not intend to merge the warehouse unit into a broader unit, nor was it in fact merged. Most significant, in our opinion, is the separate recognition extended to the Steelworkers as the bargaining representative of the warehouse employees pursuant to the 1968 Stone Workers certification. Had the parties truly desired to create a larger unit among all the employees subject to the contract, they could easily have described such a broad unit in the recognition clause. That they chose instead to continue distinct recognition of the Steelworkers as the representative of the warehouse employees is strong evidence that no merger was contemplated.

Further support for our conclusion is contained in the provisions of the 1974 contract establishing separate stewards for each department, and setting up wage scales for job classifications by department and departmental lines of progression. The participation of employee representatives from each department in the 1974 negotiations, the separate discussion of each department's problems during the bargaining sessions, and the holding of separate negotiating meetings concerning each department's situation also militate against finding that any merger of units was intended or occurred. We also note that separate identity of the warehouse unit is

indicated by the facts that the employees spend the overwhelming proportion of their time working in the warehouse, that they work under separate immediate supervision, and that they do not interchange with employees in other job classifications. Taken together, all of the foregoing lends considerable weight to the record testimony that a single contract was negotiated in 1974 covering employees in several different bargaining units simply for economy and convenience.

As we stated in *Utility Workers Union of America, AFL-CIO, and its Locals Nos., 111, 116, 138, 159, 264, 361, 426, 468, 478, and 492 (Ohio Power Company)*,<sup>3</sup> "The Board does not find a merger in the absence of unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units." In our estimation, the evidence recited above falls far short of demonstrating a mutual and unmistakable intent to merge the warehouse unit into a broader unit. Rather, the facts disclose, as in *Remington Office Machines, Minneapolis Branch, Division of Sperry Rand Corporation*,<sup>4</sup> "a practice of centralized bargaining for separate bargaining units rather than . . . a practice of bargaining for one overall unit." Particularly pertinent is that, in *Remington* and in *Metropolitan Life Insurance Company*,<sup>5</sup> the Board, in finding no merger of bargaining units, relied heavily on the fact of separate recognition of representatives for distinct units in the recognition clauses of the contracts. The Board in both cases also discounted the importance of uniform contractual terms and conditions of employment as showing an intent to merge bargaining units, and, as well, evidence that the *Metropolitan Life* contract was ratified by a pooled vote of union members in both bargaining units involved therein. Of course, in this case, a number of contract terms underline the separate existence of the warehouse unit.<sup>6</sup>

We find no merit in the contention of the Steelworkers, which was made at the hearing but not passed upon by the Regional Director in his decision, that the instant petition is barred by the 1974 collective-bargaining agreement. The petition was clearly filed during the 60-90 day open period prior to the expiration of the contract.

Accordingly, having concluded that the warehouse unit certified in 1968 was not merged into a larger unit, we find that the following employees of the Employer constitute a unit appropriate for the

<sup>2</sup> The record shows that only members of the Steelworkers were eligible to vote on acceptance of the contract, but does not clearly indicate whether only members or all employees represented by the other unions were entitled to vote on the matter.

<sup>3</sup> 203 NLRB 230, 239 (1973), enfd. 490 F.2d 1383 (C.A. 6, 1974).

<sup>4</sup> 158 NLRB 994, 996 (1966).

<sup>5</sup> 172 NLRB 1257 (1968).

<sup>6</sup> *The Armstrong Rubber Company*, 208 NLRB 513 (1974), which was cited by the Regional Director, is distinguishable, as there the Board found that a unit of tire laboratory technicians had been merged into a production and maintenance unit, where the recognition clause of the contract specifically described the production and maintenance unit as including the tire laboratory technicians.

purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All warehousemen employed by the Employer at its Esperanza Property, excluding professional

employees, office clerical employees, guards and supervisors as defined in the Act.

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